

The Effect of Negative Human Behaviour on Contract Management in Local Government in the Western Cape

by

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Declaration

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Abstract

Contract Management with good standards, clear roles and responsibilities, accountability and the institutionalisation of an effective system has become very challenging within municipalities and the public sector. The researcher intends to prove the hypothesis that negative human behaviour affects Contract Management in municipalities. The focus of this study will be to understand the constitutional and legislative framework for Contract Management and its impact on human behaviour, with specific reference to the norms and standards. The researcher will focus on the various stages of Contract Management and the influences that human behaviour has on it.

The literature review consists of theories as well as research from scholars within the field of Contract Management, Supply Chain Management (as a process theory), literature on international modules and frameworks, the South African theories, the Code of Conduct for public servants and concludes with the reports of the Auditor-General, good governance and human behaviours and a summary of the gaps identified. The legislative framework for Contract Management is highlighted and discussed, and the researcher identified a case study to research the problem statement.

Further to that, the researcher will identify professionals within the field of Contract Management internally within municipalities who are tasked daily to perform the Contract Management function. The researcher has identified external specialists who have the knowledge, experience, and expertise to share their professional opinion on the challenges and shortcomings in municipalities on the implementation of an effective Contract Management system. Organisations within the community will also be targeted to participate in answering a pre-populated questionnaire about the functioning of the municipality and whether municipalities should be held accountable.

The key findings of this study revealed that municipalities lack the required skills, experience, knowledge and professional ethos; this was confirmed by both the panel of experts as well as the senior officials within the municipalities. The over-regulation of the Supply Chain Management (SCM) industry contributes to the shortcuts, which means that service delivery gets compromised at the expense of compliance. The internal staff alluded to the disjuncture between the various pieces of legislation, and the panel of experts agreed that National Treasury should seriously consider the issuing of a single framework. The key findings of the study also

proved that municipalities lack clear roles and responsibilities, accountability, consequence management and leadership.

The responses from 67 per cent of the internal senior officials within municipalities confirmed that over-regulation is a contributing factor to shortcuts to comply with the cost-of-service delivery. The responses from 100 per cent of the external experts also confirmed that municipal officials do not understand the legislative and constitutional environment that governs Contract Management. The responses from the internal senior officials on the legislative framework were significant because 66,7 per cent of the responses substantiated that officials do not understand the legislative framework that governs Contract Management within municipalities.

Most of the internal senior officials, (67 per cent) indicated that budget holders do not have the required qualifications, expertise or professional ethos to manage contracts effectively.

The responses – from 100 per cent of the external experts – to whether municipal officials possess the required knowledge and expertise to manage contracts effectively were “No”, indicating that they do not possess the expertise and knowledge.

The responses from the external community organisations justified the aim of the study i.e., to explore the extent to which Sections 152, 217 and 195 of the Constitution (1996), gets compromised; 100 per cent of those participants confirmed that municipal officials lack professionalism and a high level of ethics. The external experts indicated that municipalities lack meaningful public participation, and by involving the communities during the Integrated Development Planning (IDP) processes will ultimately change the perception of the community in terms of professionalism and levels of ethics – if involved during the Contract Management stages. The gaps identified are followed by recommendations for the establishment of an effective Contract Management system within municipalities.

The study concludes with several recommendations made by the researcher, which include the appointment of staff with the necessary competencies and experience to implement an effective Contract Management system within municipalities; municipalities must define clear roles and responsibilities for all involved during the Contract Management stages; and the lack of leadership, accountability, consequence management and corrective measures should be addressed. The study also recommends further research on the adoption of one single legislative framework for Contract Management and that communities should participate by monitoring and reporting on the progress of contracts.

Opsomming

Kontrakbestuur met goeie standarde, duidelike rolle en verantwoordelikhede, aanspreeklikheid en die institutionalisering van 'n effektiewe stelsel het baie uitdagend geword binne munisipaliteite en die openbare sektor. Die navorser is van voorneme om die hipotese te bewys dat negatiewe menslike gedrag kontrakbestuur in munisipaliteite beïnvloed. Die fokus van hierdie studie sal wees om die grondwetlike en wetgewende raamwerk vir kontrakbestuur en die impak daarvan op menslike gedrag te verstaan, met spesifieke verwysing na die norme en standarde. Die navorser fokus op die verskillende stadiums van kontrakbestuur en die invloede wat menslike gedrag daarop het.

Die literatuur oorsig bestaan uit teorieë sowel as navorsing van geleerdes op die gebied van kontrakbestuur, Voorsieningskettingbestuur as 'n proseteorie, internasionale modules and raamwerke, Suid Afrikaanse teorieë, die gedragskode vir staatsamptenare en word dan afgesluit met die verslae van die ouditeur-generaal, menslike gedrag en 'n opsomming van die geïdentifiseerde leemtes. Die wetgewende raamwerk vir kontrakbestuur word uitgelig en bespreek en die navorser het 'n gevallestudie geïdentifiseer om die probleemstelling na te vors.

Verder sal die navorser intern binne die gebied van kontrakbestuur intern munisipaliteite identifiseer wat daagliks die taak het om die kontrakbestuursfunksie uit te voer. Die navorser het eksterne spesialiste geïdentifiseer wat die kennis, ervaring en kundigheid het om hul professionele mening te deel oor die uitdagings en tekortkominge in munisipaliteite oor die implementering van 'n effektiewe kontrakbestuurstelsel. Organisasies binne die gemeenskap sal ook daarop gemik wees om deel te neem aan die beantwoording van 'n voorafbevolkte vraelys oor die werking van die munisipaliteit en of munisipaliteite aanspreeklik gehou moet word.

Die belangrikste bevindinge van hierdie studie het aan die lig gebring dat munisipaliteite nie oor die nodige vaardighede, ervaring, kennis en professionele etos beskik nie, en dit is bevestig deur sowel die paneel van kundiges asook die senior amptenare in die munisipaliteite. Die oorregulering van die voorsieningskanaal bestuur industrie bydra tot die kortpaaie, wat daartoe lei dat dienslewering in die gedrang kom ten koste van voldoening. Die interne personeel verwys na die skeiding tussen die verskillende wetgewing, en die paneel van deskundiges het saamgestem dat die Nasionale Tesourie die uitreiking van 'n eenvormige raamwerk ernstig moet oorweeg. Die belangrikste bevindinge van die studie het ook bewys dat munisipaliteite

nie duidelike rolle en verantwoordelikhede het nie, en dat daar 'n tekort aan aanspreeklikheid, gevolgsbestuur en 'n duidelike gebrek aan leierskap bestaan.

Die antwoorde van 67 persent van die interne senior amptenare in munisipaliteite bevestig dat oorregulering 'n bydraende faktor is tot kortpaaie om aan die leweringskoste te voldoen. Die antwoorde van 100 persent van die eksterne kundiges bevestig ook in hul antwoorde dat munisipale amptenare nie die wetgewende en grondwetlike omgewing, wat kontrakbestuurbeheer, verstaan nie. Die antwoorde van die interne senior amptenare op die wetgewende raamwerk was beduidend omdat 66,7 persent van die antwoorde bewys het dat amptenare nie die wetgewende raamwerk verstaan wat kontrakbestuur binne munisipaliteite beheer nie.

Die meerderheid van die interne senior amptenare, (67 persent) het aangedui dat begrotingshouers nie oor die nodige kwalifikasies, kundigheid of professionele etos beskik om kontrakte effektief te bestuur nie.

Die antwoorde van 100 persent van die eksterne kundiges op die vraag of munisipale amptenare oor die nodige kennis en kundigheid beskik om kontrakte effektief te bestuur, was “Nee”, wat daarop dui dat hulle nie oor die kundigheid en kennis beskik nie.

Die antwoorde van die eksterne gemeenskapsorganisasies regverdig die doel van die studie d.w.s, om te ondersoek in watter mate Artikels 152, 217 en 195 van die Grondwet (1996), in die gedrang kom, en 100 persent van die deelnemers het bevestig deur te antwoord dat munisipale amptenare nie professionaliteit en 'n hoë vlak van etiek het nie. Die eksterne kundiges het aangedui dat munisipaliteite nie betekenisvolle openbare deelname uitvoer nie en dat die betrokkenheid van die gemeenskap tydens die Geëintegreerde Ontwikkelingsplan (GOP) proses uiteindelik die persepsie van die gemeenskap ten opsigte van professionaliteit en etiese vlakke sal verander – indien hulle tydens die kontrakbestuurfases betrokke is.

Die leemtes wat geïdentifiseer word, sal gevolg word deur aanbevelings vir die daarstelling van 'n effektiewe kontrakbestuurstelsel binne munisipaliteite.

Die studie word afgesluit met 'n aantal aanbevelings wat deur die navorser gemaak is, wat insluit die aanstelling van personeel met die nodige vaardighede en ervaring om 'n effektiewe kontrakbestuurstelsel binne munisipaliteite te implementeer; munisipaliteite moet duidelike rolle en verantwoordelikhede vir alle betrokkenes tydens die kontrakbestuurfases definieer; die gebrek aan leierskap, aanspreeklikheid, gevolgsbestuur en die gebrek aan regstellende

maatreëls moet aangespreek word. Die studie beveel ook verdere navorsing aan oor die daarstelling van 'n eenvormige beleidsraamwerk vir kontrakbestuur en dat gemeenskappe moet deelneem deur die vordering van kontrakte te monitor en daaroor verslag te doen.

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- B. Interview Questions, Section A, B, and C
- C. Research Permission
- D. Permission Letter Municipal Manager

List of Acronyms and Abbreviations

AG	Auditor – General
AGSA	Auditor-General of South Africa
AO	Accounting – Officer
BAC	Bid Adjudication Committee
BEE	Black Economic Empowerment
CIDB	Construction Industry Development Board
CFO	Chief Financial Officer
CMF	Contract Management Framework
CMG	Contract Management Guide
CPAR	Country Procurement Assessment Review
CPI	Corruption Perceptions Index
FIDIC	Federation Internationale des Ingenieurs-Conseil
GCC	General Conditions of Contract
GDP	Gross Domestic Product
IDP	Integrated Development Plan
IDMS	Infrastructure Development Management System
IT	Information Technology
JBCC	Joint Building Contracts Committee
KPI	Key Performance Indicator
MFMA	Municipal Finance Management Act
MM	Municipal Manager
MMCL	Municipal Minimum Competency Levels
MPAC	Municipal Public Accounts Committee

MSA	Municipal Systems Act
MTEF	Medium-Term Expenditure Framework
NAO	National Audit Office
NDP	National Development Plan
NEC	New Engineering Contract
NT	National Treasury
OGC	Office of Government and Commerce
PAIA	Promotion of Access to Information Act
PMS	Performance Management System
PCCA	Prevention and Combating of Corrupt Activities Act
PPP	Private public Partnership
PT	Provincial Treasury
SAICE	South African Institute of Civil Engineers
SDBIB	Service Delivery Budget Implementation Plan
SIU	Special Investigating Unit
SLA	Service Level Agreement
SOP	Standard Operating Procedure
SPL	School of Public Leadership
SCM	Supply Chain Management

CHAPTER 1: INTRODUCTION

1.1 Introduction

The Constitution of the Republic of South Africa (Act 108 of 1996) stipulates in Section 152(1) that municipalities need to provide democratic and accountable government to local communities. The Constitution (1996), then in Section 195, stipulates that the basic principles of Public Administration are to ensure that a high standard of professional ethics is promoted and maintained, and that the administration needs to ensure that resources are utilised efficiently, economically, and effectively. This section furthermore stipulates that: officials in the Public Administration must be accountable to the public and community. Section 217(1) of the Constitution (1996) stipulates that: organs of state, whenever dealing with procurement, must do so according to a system that is fair, equitable, transparent, competitive, and cost-effective.

The purpose of this study is to prove the hypothesis of the researcher: “That negative human behaviour has an effect on Contract Management in local government in the Western Cape”. The focus of this study will be to explore negative human behaviour in relation to the contributing factors, such as the lack of skills, capacity, roles, and responsibilities that are experienced within municipalities. This study will furthermore explore the extent to which Sections 152, 195 and 217, of the Constitution (1996), are compromised because of negative human behaviour. Furthermore, the researcher intends to prove that ineffective Contract Management within municipalities is a result of compromising the constitutional provisions as mentioned.

The researcher will define the meaning of good Contract Management, its advantages, and its standards as well as what constitutes negative human behaviour, for example identifying the various types of corrupt practices. The researcher also suggests that municipalities lack qualified engineers, Contract Managers and financial managers that will ensure the implementation of effective Contract Management systems and processes. It is also the opinion of the researcher that no clear roles and responsibilities are determined within Contract Management. This further contributes to the lack of accountability and consequence management within municipalities. The lack of ownership and responsibility contributes to ineffective Contract Management as no one is being held accountable. The researcher will also

prove that whenever and wherever leadership is absent in the creation of an ethical culture within an organisation, negative human behaviours seem to be prevalent and out of control. The researcher will conclude with recommendations that seek to mitigate, or remedy, negative human behaviour and will result in effective Contract Management with better and stricter controls.

The researcher decided on this specific topic due to the continuous reports from the Auditor-General, which indicated that municipalities lack accountability and consequence management. Also, together with the current climate of corruption within our country, as well as the high number of commissions that are established to deal with the offenders and offences, and the continuous plea of communities for service delivery.

1.2 Background and Rationale

Municipalities are often criticised in the national media, and local communities regularly embark on service delivery protests that may be the result of negative human behaviour within these municipalities. Media reports suggest that the protest actions are aimed against alleged corruption in the awarding of tenders to service providers that do not meet the minimum technical requirements in delivering on major contracts. This controversial issue motivated the researcher to pursue this study and to determine what the reasons could be for such negative behaviour and the effect that it has on Contract Management within municipalities in the Western Cape.

At a strategic level, municipalities adopt an Integrated Development Plan (IDP) every five years, which is aimed at service delivery over the 5-year term of politicians. The needs of the communities are assessed and prioritised, and after consultation tabled before the council. The Council approves a three-year budget in terms of its Medium-Term Expenditure Framework (MTEF), which is aligned to the IDP and is also linked to a Performance Management System (PMS). The PMS, and specifically the Service Delivery Budget Implementation Plan (SDBIP), becomes a measuring tool whereby officials' performance is measured in terms of their individual Key Performance Indicators (KPI's) and service delivery targets. This study argues that the objectives of local government in South Africa, as set out in the Constitution (1996), (Section 152), are not met, due to negative human behaviours, such as the lack of skills,

capacity and knowledge, as well as the types of corrupt practises that are linked to ineffective Contract Management.

Public procurement contributes approximately 10-15 per cent of South Africa's Gross Domestic Product (GDP), and procurement in government is open to corruption. Public funds are stolen and the opportunities for fraud and corruption are significant (Soreide, 2002).

Municipal officials must adhere to a high standard of professional ethics and should also utilise resources efficiently, economically, and effectively as prescribed in the principles for Public Administration according to Section 195 of the Constitution (1996). The perceived unwillingness of senior managers within municipalities to implement corrective measures on findings raised in the audit reports by the Auditor-General illustrates a lack of consequence management and commitment to adhere to Section 195 of the Constitution (1996). The researcher argues that the lack of accountability and consequence management is related to the fact that no clear roles and responsibilities exist within the Contract Management system.

Section 217 of the Constitution (1996) prescribes that the procurement of goods and services should be according to a system that is open, fair, transparent, equitable and cost-effective. The monitoring by the public on the progress of the Contract Management stages of the project, as approved in the IDP, could assist communities in keeping public officials responsible and accountable whenever it has been found that officials did not perform in terms of their KPI's. Value for money procurement becomes imperative because rates and tariffs are generated from limited revenue sources contributed by communities. The prevailing economic and social conditions necessitate local authorities to be even more responsible and limit irregular, fruitless and wasteful expenditure. The revenue envisaged annually with the approval of the budget mainly depends on rates and user chargers from the communities, grants from the national and provincial government and levies that are raised within the municipality.

Municipalities must appoint service providers that comply with the technical specifications and all Supply Chain Management (SCM) prescripts to ensure value for money procurement. The researcher intends to explore this further because municipalities are regularly reported in the media for corruption, poor Contract Management, and collusion in the awarding of tenders. Cabinet promulgates and enacts new laws regularly, and the notion that local government has become over-regulated has become a frequent saying, even in the private sector, suggesting a difficulty to engage with the public sector.

South Africa enacted the Prevention and Combatting of Corrupt Activities Act (PCCA) (12 of 2004), and when implemented with a zero-tolerance approach, the researcher argues that, if implemented harshly, it could lead to an increase in the number of cases successfully prosecuted and brought before a court. This specific Act (12 of 2004) seeks to criminalise corruption, and to restrict officials and suppliers, if found guilty of corruption, in the awarding of contracts. On the one hand, the public sector is over-regulated, and on the other hand, there is a lack of control over wasteful and negative behaviours; for example, corrupt practices.

The researcher will explore the anomaly of over-regulation versus lack of controls based on semi-structured interviews with professionals in the fields of procurement and local government to ascertain whether local government is indeed over-regulated, lack controls and if local government officials lack accountability. Municipalities are often placed under financial administration, forensic investigations are performed at numerous municipalities, senior officials are prosecuted, and irregular and wasteful expenditures have material values concerning the approved budgets within municipalities; according to reports in the media and findings of the Auditor-General. The researcher argues that Sections 152, 195 and 217 of the Constitution (1996), are compromised because of misconduct related to some of the findings mentioned before.

The study argues that a lack of accountability, a lack of prudent Financial Management practices, a lack of consequence management and weak internal controls are contributing factors that compromise the current state of local government and municipalities in the Western Cape.

1.3 Research Problem

Human behaviour can influence SCM outcomes negatively and positively. In municipalities where an ethical culture is a tone from the top, one would normally find that in such municipalities a positive culture towards controls and ethical conduct exists. In organisations where an ethical culture is led from the top, we will normally find that its systems, processes, and procedures are based on integrity and sound Financial Management practices.

In municipalities where negative human behaviour – such as a lack of skills, capacity, and knowledge – is prevalent, the SCM environment will be under threat and numerous SCM

problems may exist. The SCM problems that are experienced are normally related to the lack of skills, capacity and knowledge, and the non-compliance results in the continuous incurrence of fruitless, wasteful, and unauthorised expenditure. The impact of these negative behaviours on the communities will be that service delivery is compromised and that poor financial governance is evident.

The heavy regulation and legislative environment in which the SCM environment operates daily often result in SCM officials and other role-players within the SCM system seeking shortcuts and easier ways to comply with the strict SCM prescripts.

The negative human behaviours referred to are mostly due to the lack of skills and knowledge of SCM officials and other SCM role-players to effectively implement and manage an SCM system successfully and Contract Management. Another contributing factor that leads to negative human behaviours is the systems and roles and responsibilities of all role-players when contracts are awarded. The lack of clear guidance on the participation of specific SCM and/or engineering officials in the various Contract Management stages can also be a cause of the negative human behaviour relevant to Contract Management.

The lack of capacity within municipalities to effectively manage Contract Management is a contributing factor that leads to negative human behaviour. Municipalities, in general, do not have sufficient capacity to manage contracts effectively, and this results in officials either turning a blind eye or not taking ownership of projects that directly affect service delivery and Contract Management as a whole. Non-compliance to an effective Contract Management system is a direct result of negative behaviours, which include a lack of skills, capacity, and knowledge in the procurement of goods and services and in particular large projects that are meant to uplift communities.

Unethical behaviour, a lack of a Code of Ethics and a lack of ethical leadership within the local government could be regarded as some of the major contributing factors to a corrupt culture within the organisation. Corrupt practices such as bribery, kick bags, conflicts of interest, extortion, favouritism, and abuse of power compromise the functions that public officials should perform in terms of the standards of professional ethics and for the effective, efficient and economic utilisation of resources.

Transparency International's Corruption Perceptions Index (CPI), in 2018, ranked South Africa as number 73 out of 180 countries internationally. South Africa, at that stage, scored 43 points

out of 100, and the 43 points illustrated that our country ranked high amongst those that are perceived as being corrupt, that we cannot manage fraud and corruption effectively and that all our wrongdoings are within the public domain (Sibanda, 2019).

South Africa as a country promulgates more and more laws and regulations, and the research suggests that regardless of the plethora of laws, the lack of accountability by public officials, as highlighted annually by the Auditor-General in its final management letters to municipalities, contribute to the current state of Contract Management within local government.

The pertinent and fundamental problem that exists in SCM is the fact that the SCM environment lacks skills, capacity and knowledge and gets manipulated because of malpractices, collusive bidding and/or unethical conduct by SCM officials and user departments together with service providers who seem desperate to be appointed. The appointment of incompetent staff also contributes to the non-compliance of SCM prescripts. The non-compliance to SCM prescripts directly results in excessive amounts classified as irregular expenditure by the Auditor-General reports. Communities and investors lose trust and confidence in the affairs of the municipality due to the non-adherence and inability to rectify issues highlighted by the Auditor-General, as well as non-compliance to laws and regulations, lack of consequence management and a lack of commitment of top management to punish the culprits.

The researcher is of the opinion that municipalities have major challenges to manage their financial affairs, in terms of irregular expenditure, raised by the Auditor-General for large projects where under and/or poor performance have been audited. The plea of communities for service delivery through public protests can be regarded as communities exercising their right in terms of the objectives of local government, specifically demanding that local government must provide democratic and accountable services. The prevalence of current service delivery protests seems to be the only option available to communities, particularly where it was proven that service providers were paid in full for services either not rendered and/or for inferior goods delivered. The reality, however, seems to be that communities will have to wait a number of years for services such as water, electricity, sewerage and housing after large infrastructure projects were budgeted for and approved but could not be completed due to negative behaviour during the Contract Management stages and poor contract monitoring and performance.

The SCM fraternity and municipalities find it difficult to acquire expertise in addressing Contract Management, contract monitoring and contract administration. Another challenge for municipalities is to deal with service providers who are in breach of the signed and agreed contracts, specifically when none or poor performance becomes evident. The lack of capacity to ensure that service providers perform in terms of the contract, combined with a lack of contract monitoring and contract administration contribute significantly to the large amounts raised as irregular, fruitless, and wasteful expenditure by the Auditor-General in its audit reports. The researcher suggests that in many instances it is because service providers did not meet the minimum technical requirements but were appointed regardless, indicating negative human behaviour by officials. In some instances, we will find that staff with little technical experience are responsible for the drafting of final specifications and conditions of tenders in the tender documents. This practice is evident in some municipalities and the Auditor-General has raised significant audit findings on it.

The researcher is of the opinion that municipalities are in dire need of experts in the field of Contract Management, engineers with experience to deal with major and large infrastructure projects, a clear separation of powers and defined roles and responsibilities for all stakeholders in Contract Management, as well as an effective system to deal with non-performers and to hold them accountable.

1.4 Research Question

What effect does negative human behaviour have on Contract Management in municipalities in the Western Cape?

1.5 Research Aim

The hypothesis of the researcher, concerning the primary objectives of this study, will be tested, which are: what are the definition and standards of effective Contract Management? The following question, “what constitutes negative human behaviour?”, will be explored further in terms of the lack of skills, capacity and knowledge and will include examples of the types of corrupt practices within the SCM environment in municipalities in the Western Cape. Considering the hypothesis, the researcher will explore and examine the perceptions of key

stakeholders to prove the hypothesis, “that negative behaviour” affects Contract Management in municipalities in the Western Cape. The researcher will furthermore highlight the gaps within the Contract Management system and make the necessary recommendations. The researcher will also contextualise the hypothesis by assessing the extent to which Contract Management gives effect to Section 217 of the Constitution (1996), and whether it is implemented according to the principles of Section 195 of the Constitution (1996), and whether it meets the objectives of Section 152 of the Constitution (1996). Further to the above, the researcher also intends to prove that negative human behaviour is evident whenever municipalities have little or no capacity to implement an effective Contract Management system and whenever officials lack skills and when systems are not in place. The researcher will also prove that effective Contract Management will be present in municipalities only when clear roles and responsibilities are assigned throughout the various Contract Management stages.

The researcher will address the research aim by testing the hypothesis and collect data to prove that negative behaviour influences Contract Management and that it leads to ineffective Contract Management in municipalities within the Western Cape. The researcher also intends to analyse the data collected to arrive at conclusions that are based on facts and to provide evidence for testing if negative human behaviour has a direct effect on Contract Management, and that it leads to ineffective Contract Management in municipalities in the Western Cape.

1.6 Objectives of the Study

The researcher intends to substantiate the research question: What effect does negative human behaviour have on Contract Management in municipalities in the Western Cape?

By way of the following objectives of the study:

- a) To understand the constitutional and legislative framework for Contract Management and how this should impact human behaviour (i.e., SCM norms and standards).
- b) To describe how human behaviour influences the stages of Contract Management and Contract Management outcomes. (compliance, legislation, lack of accountability, consequence management, corruption, etc.)

- c) To analyse how negative human behaviour affects each of the stages of Contract Management. (Empirical).
- d) To make recommendations on how to minimize negative human behaviour and encourage ethical human behaviour.

The researcher argues that Section 152 of the Constitution (1996), which deals with the objects of local government, Section 195 of the Constitution (1996), which deals with standards, professional ethics and values, and Section 217, which deals with open, fair, transparent, cost-effective, and equitable procurement system are compromised as a result of negative behaviours, which include the lack of skills, capacity and knowledge. Furthermore, that negative human behaviour affects Contract Management in municipalities in the Western Cape.

The researcher's intention with this study is to define effective Contract Management and its standards. The researcher intends to prove further that negative human behaviour, which includes the lack of skills, capacity, and knowledge together with the types of corrupt practices have an effect on Contract Management, and that it leads to ineffective Contract Management in municipalities in the Western Cape. The researcher will also identify gaps in Contract Management and make specific recommendations.

1.7 Research Design and Methodology

The aim of this study is to make a comparison between positive and negative human behaviour, and to investigate whether negative behaviour impacts and affect Contract Management in municipalities. To achieve this aim, the researcher had to consider the relevant research methodology for this study. A framework for the research design on how the research will be conducted and how the information will be collected and analysed and then be interpreted is known as the research design (Babbie & Mouton, 2001:75). Research designs can be either empirical or non-empirical (Babbie & Mouton, 2001:647). The process of explaining the relevance, in terms of the identified research methods and the implementation of the research plan, is known as the research methodology (Babbie & Mouton, 2001:647).

The study will be empirical and exploratory as it will address the problems that currently exist within municipalities concerning SCM – and specifically Contract Management. The purpose is to determine and assess whether negative human behaviour influences and leads to

ineffective Contract Management in municipalities within the Western Cape. The researcher will also focus on the following important aspects in relation to the problem statement:

- a) To define effective Contract Management and its standards.
- b) To define positive and negative human behaviour with respect to Contract Management.
- c) To state the regulatory environment of SCM and levels of non-compliance specific to Contract Management.
- d) To explore compliance to the objectives of local government and the professional standards and ethics required to be maintained and promoted by public officials.

This study will be conducted by collecting data from three different audiences relevant to the topic. The audiences include officials working within the Contract Management domain within municipalities, experts with in-depth knowledge and expertise on the topic of Contract Management and external stakeholders that are part of the municipal Integrated Development Planning processes.

The researcher will compile questionnaires with semi-structured and open-ended questions that will allow the selected sample audience (SCM Managers, Chief Financial Officers, Head Engineers, and Contract Managers) to indicate whether negative human behaviour such as corrupt practices may lead to ineffective Contract Management in municipalities. It will also be expected from the selected sample of Municipal Officials to specify whether SCM units are fully capacitated to enforce and ensure compliance to effective Contract Management within the SCM domain. The researcher will also gather information from the selected audiences in terms of the constitutional and legislative framework for Contract Management, the challenges in adhering to that legislative framework and ascertain whether corrective measures are implemented whenever non-compliance was identified. The study also aims to gather information from the selected audiences on whether municipalities experience over-regulation and whether it contributes to negative human behaviour. Another very important factor concerning the purpose, and problem statement, is to gather information from the selected audiences to indicate whether sufficient roles and responsibilities clarification is certain and effectively implemented. The research design and methodology also sought to gather information on whether municipal officials lack skills, expertise, qualifications, and experience with the implementation of Contract Management in the municipality.

The researcher will identify four experts, which includes a professor – who is the vice dean of a law faculty within the department of Public Law – who teaches procurement law, and a doctor – who is a specialist in construction procurement in South Africa – who issued several articles and journals relating to construction procurement and infrastructure in South Africa. The third expert is a well-known legal and SCM specialist across several municipalities in South Africa, and who assists municipalities with the implementation of SCM compliance matters. The fourth expert is a former contract manager with experience in the implementation of effective systems, with a proven record and qualifications in project management, construction and infrastructure procurement. The above-mentioned professionals will be requested to give a motivation on whether municipal officials entrusted with the implementation of Contract Management possess the required expertise, qualifications, and experience for managing contracts effectively. It would also be expected from the panel of experts to give a motivation on whether the lack of consequence management contributes to the state of Contract Management in municipalities. The questionnaire will be based on the research objectives and the selected audience will need to answer the questions comprehensively. The researcher will target qualified professionals and experts in the local government sphere and the SCM environment. The professionals who are scholars in the field of public procurement, Contract Management, contract law, governance, risk and ethics and sustainable local government are, Professor Geo Quinot, Adv. Helen Venter and Dr Allison Anthony, in addition to several other professionals with whom the researcher will conduct the interviews.

The researcher will gather information from four external stakeholders who actively participate during the annual Integrated Development Plan (IDP) meetings, and who are familiar with the systems and processes of the Municipal Administration. These organisations normally apply for grants in Aid for them to sustain their local businesses. The purpose is to ascertain what the public perception is of the open and fair processes of SCM. The study will also gather information from the four external stakeholders on whether there are general trust and credibility during the procurement processes of the municipality. Furthermore, the researcher will conduct random interviews with several stakeholders that take part in the public participation processes during the IDP Roadshows within a municipality. This is to ascertain and test the public's perception and opinion relating to Contract Management procurement practices within the municipality.

The researcher will also make use of qualitative research methodologies, collected via open-ended interviews. As the researcher is a senior SCM practitioner, he will be better equipped to understand what the real problems are in relation to the research problem.

1.8 Key Concepts and Definitions

The researcher will identify and conceptualise a significant number of concepts; the below concepts have been identified that are relevant to this study.

1.8.1 Corruption

According to Wiehen and Olaya (2006:14), corruption is defined as the misuse of entrusted power for private benefit. Corruption is often called control crime because the briber and giver are both corrupt in their actions. According to Nye (1967:966), a well-known Harvard political scientist defines corruption as behaviour that is not in line with the normal functions and include behaviours such as bribery, nepotism and misappropriation.

Huther and Shah (2000:1) define corruption as the abuse of public or private positions to gain personally, whilst Lyer and Samociuk (2006:3) state that corruption includes any action that constitutes theft, deception, and bribery.

Corruption is when individuals abuse their position to benefit, and it is a two-way process that is between public and private partners who act unethically (GOPAC, 2005:29).

1.8.2 Supply Chain Management

Mentzer et al. (2001:2-3) describes SCM as “the systematic, strategic coordination of the traditional business functions and the tactics across these business functions within a particular company and across businesses within the supply chain, for the purposes of improving the long-term performance of the individual companies and the supply chain as a whole.”

1.8.3 Value for Money Procurement

Value for Money is defined as the utilisation of public resources to maximise the procurement objectives (National Treasury, 2008).

1.8.4 Code of Conduct of SCM Officials and Other Role-Players

National Treasury issued a Code of Conduct on 28 July 2005 for municipalities and all other entities as part of the SCM policies, with the sole purpose of promoting trust and respect in an environment where business can be conducted with integrity. The Code of Conduct addresses conflicts of interest, accountability, openness, confidentiality, and combative practices. Officials annually sign acknowledgement and acceptance of the Code of Conduct (National Treasury, 2005).

1.8.5 Accountability

According to Shah (2007:137), accountability in the field of governance is the relationship between both public and private entities with the idea and intention that someone is obligated to take account for their actions. Accountability is a relationship of power, and democratic accountability is about the ability to report to the constituencies who delegated the power in the first instance.

1.8.6 Constitutional Pillars of Procurement

Section 217 of the Constitution (1996) stipulates that the procurement of goods and services needs to be within a system that is open, fair, transparent, cost-effective, and equitable. It is referred to as the constitutional pillars of procurement.

1.8.7 Objectives of Local Government

The Constitution (1996), under Section 152, stipulates that the objects of local government are:

(a) to provide a democratic and accountable government for local communities.

- (b) to ensure the provision of services to communities in a sustainable manner.
- (c) to promote social and economic development.
- (d) to promote a safe and healthy environment; and
- (e) to encourage the involvement of communities and community organizations in the matters of local government.

1.8.8 Functions of the Auditor-General of South Africa (AGSA)

The functions of the Auditor-General are, as stipulated under Chapter 9, Section 188 of the Constitution (1996), to audit and report on the accounts, financial statements and Financial Management of all national and provincial state departments and administrations, including all municipalities, and any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.

1.8.9 IDP within Municipality

An IDP is legislated by the Municipal Systems Act 32 of 2000 (Republic of South Africa, 2000) and supersedes all other plans that guide development at a local level, and is, therefore, the principal strategic planning instrument that guides and informs all planning, budgeting, management and decision-making in a municipality.

1.8.10 Contract Management

Contract Management can be defined as the safeguarding of the implementation of agreements by all stakeholders with an obligation to ensure that action is taken to justify that the contract is managed effectively (Hugo et al., 2006).

1.9 Delimitations of the Study

The purpose of the study is to focus on the research hypothesis “that negative human behaviour has an effect on Contract Management and that it leads to ineffective Contract Management in municipalities in the Western Cape”. The researcher suggests that it cannot be assumed that all non-compliant activities can be regarded as negative human behaviour but could be due to a lack of capacity within SCM units and the resultant challenges with the enforcement of contracts, or genuine oversight mistakes. The researcher will look at the contributing factors that lead to negative human behaviours during the Contract Management stages of a project.

1.10 Summary and Findings

This chapter outlined and provided an overview of the research problem, as well as the rationale and aim of the study. Pertinent definitions and descriptions that will be focussed on in the study will be provided within the following chapters. Chapter One will conclude with the limitations of the study, followed by a summary and findings. The next chapter will be the literature review, and the researcher will look at the SCM function as a discipline within the broader Financial Management domain, the functions of the local government, Contract Management and human behaviour before the chapter concludes with the identification of gaps. The researcher will highlight, in the next chapter, the outcomes of the literature review as mentioned above.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

Municipalities are in the news regularly for tender corruption, and the researcher suggests this is mainly due to the lack of consequence management, sound Financial Management systems and a lack of integrity in the awarding of tenders. The researcher further suggests that officials compromise the constitutional provisions with respect to the objects of local government Constitution (1996), Section 152, and in particular “that local government must provide democratic and accountable services to its communities”, whilst officials should showcase professional ethics Constitution (1996), Section 195, and ensure that resources are utilised economically, effectively, and efficiently. According to Section 217 of the Constitution (1996), the procurement of goods and services needs to be according to a system that is open, fair, and transparent, cost-effective and equitable, which is normally referred to as the constitutional pillars of procurement. This chapter will explore the various definitions relevant to negative human behaviours, which include corruption, and will further contextualise the different types of corrupt practices that are evident within the procurement system.

The aim of this research study is to determine the effect that negative human behaviour has on Contract Management within municipalities in the Western Cape, and the researcher will highlight the Contract Management Framework, the roles and responsibilities and the audit reports related to the KwaZulu-Natal (KZN) Treasury to illustrate the similarities that exist between the two provincial Treasuries relative to Contract Management and the common findings that get reported by the Auditor-General.

This chapter will continue to highlight the foundational theories regarding SCM, and relevant concepts will be discussed in the SCM environment. The researcher will also highlight various perspectives from scholars in the fields of Law of Contract, contracts, Contract Management, contract monitoring and contract administration to emphasise and support the hypothesis that negative behaviour leads to ineffective Contract Management in municipalities within the Western Cape. The chapter will start with the aim and objectives of Financial Management, its importance, and its impact on the escalation of corrupt practices whenever Financial Management controls are absent or weak. The chapter will highlight the various conditions that are binding whenever service providers and municipalities conclude a contract and will identify

the knowledge gaps and conclude with a summary that can be linked to the problem statement. The researcher intends to explore concept analysis, in the chapter on literature review, and will highlight the various definitions pertaining to corruption, Contract Management, monitoring and administration within the SCM and local government. Financial Management will be receiving specific attention in this chapter as well as its guiding theories whereafter the researcher will highlight the international perspectives, guidelines and modules on SCM and the role of the World Bank in SCM. Then, the researcher will focus on the South African perspective, guidelines and frameworks of SCM, and emphasis will be placed on SCM as a process theory. The capacity of SCM units within municipalities and the municipal perspective will be reviewed, and the researcher will highlight the good governance principles in relation to corruption and negative human behaviour as well as the role of the Auditor-General with respect to good governance and instilling public confidence. The researcher will conclude this chapter with the identification of gaps and will then make recommendations at the end of this chapter.

2.2 Financial Management and guiding theory

Supply Chain Management as a discipline, can be regarded as an integral part of Financial Management (National Treasury, 2003:4). Financial Management can be defined as "all decisions and activities of management, as guided by a Chief Financial Officer (CFO) that impact on the control and utilisation of limited financial resources entrusted to achieve specified and agreed strategic outputs" (National Treasury, 2003:19). National Treasury (2003:19) further states that the main aim of Financial Management is "to manage limited financial resources with the purpose to ensure economy and efficiency in the delivery of outputs required to achieve desired outcomes (effectiveness) that will serve the needs of the community (appropriateness)". The researcher contends that the above definitions of Financial Management convey the essence of Section 195 of the Constitution (1996), which stipulates the basic values and principles that governs Public Administration to ensure and promote that resources are utilised efficiently, economically, and effectively. The emphasis on effective Contract Management would be on how to manage the financial affairs of the municipality as a function of the finance department under the control of the (CFO) and address contract management and negative human behaviours. Supply Chain Management is thus an integral

part of Financial Management and is required to operate under the direct supervision of the CFO according to SCM Regulation 7, Notice 868 of 2005. The Municipal Finance Management Act (MFMA) 56 of 2003 (Republic of South Africa, 2003), under Section 112, stipulates that the procurement of goods and services must be according to a system that is open, fair, transparent, cost-effective, and equitable. These provisions also have a direct correlation and link to Section 217 of the Constitution (1996).

The researcher suggests that there is a correlation or causality between the Constitutional provisions of SCM, its function as a discipline and the fact that it must operate directly under the supervision of the CFO because SCM is seen as an integral part of Financial Management and a very high-risk discipline. Corrupt practices and their influence on the SCM environment are transgressions of the Constitution (1996), the Municipal Finance Management Act (MFMA) 56 of 2003 (Republic of South Africa, 2003), and the Municipal SCM Regulations. The researcher, therefore, maintains that a correlation does exist between corrupt practices and the non-compliance to the SCM system and Constitutional and legal prescripts that govern SCM. Corrupt practices compromise value for money procurement, increases irregular expenditure, non-compliance, and result in wastage of public funds. These outcomes lead to service delivery protests, an increase in service delivery cost and the non-delivery of services to communities. As mentioned above, SCM as a discipline is an integral part of Financial Management, and the researcher will highlight the international guidelines and modules relevant to SCM and in particular the role of the World Bank – in the following section.

2.3 World bank and other international guidelines and modules of SCM

The researcher will focus on international frameworks and guidelines in relation to Contract Management as one of the elements of SCM in this section. This is because SCM is an integral part of Financial Management as mentioned in the preceding section. The roles and responsibilities of Contract Managers, the hard and soft skills, the upstream and downstream phases of contracts and the principles of Good Contract Governance will also be discussed in this section. In this section, the researcher seeks to highlight the relevance and importance of Contract Management from an international perspective and how it is implemented abroad, and that the desired outcomes, after the implementation and completion of a contract, are the same.

Cabinet approved the “Report on Opportunities for reform of Government” in November 2000, and a joint Country Procurement Assessment Review (CPAR) was undertaken by the World Bank. This initiative highlighted several deficiencies relating to governance issues and the Preferential Procurement Policy Framework Act 5 of 2000 (Republic of South Africa, 2000) regulations. There was a need to guide uniformity in procurement with one single legal framework in terms of Section 106 (1)(d) of the MFMA (56 of 2003). SCM replaced the old way of procurement and is seen as an integral part of Financial Management, which integrates processes and conforms to international best practices (National Treasury, 2003).

Contract Management emerges when two parties enter into a contract to meet their obligations and deliver on the objectives of that specific contract. It is about the building of a good relationship between the parties involved in the contract and creating mutual consent on aspects of performance. The purpose of Contract Management in municipalities is about obtaining good services and value for money on the envisaged project. Contract Management should also strive for the improvement of the performances in relation to the life cycle of the contract according to the Office of Government and Commerce (OGC, 2002).

2.3.1 The Local Government Association of South Australia views effective Contract Management within the SCM environment as follows (Local Government Association of South Australia, 2011):

- That goods and services must be delivered on time.
- All benefits should be achieved throughout the procurement process of the contract.
- The minimisation of risk and costs that are associated with the contract.
- Benefits should be optimally achieved via the contract.
- Value for money procurement.
- Dispute resolution processes.

2.3.2 Upstream and Downstream Phases of a Contract

The outputs and outcomes of a contract get managed through the process of contract implementation and management. The result of effective Contract Management ensures that value for money and outcomes of the contract is achieved. The successful implementation of contracts is influenced by upstream activities that are managed during the procurement

planning, evaluation, and adjudication of contractors (World Bank, 2018). The researcher will explore the role of the contract manager in the next section.

Below is the upward and downward stream as illustrated by the World Bank:

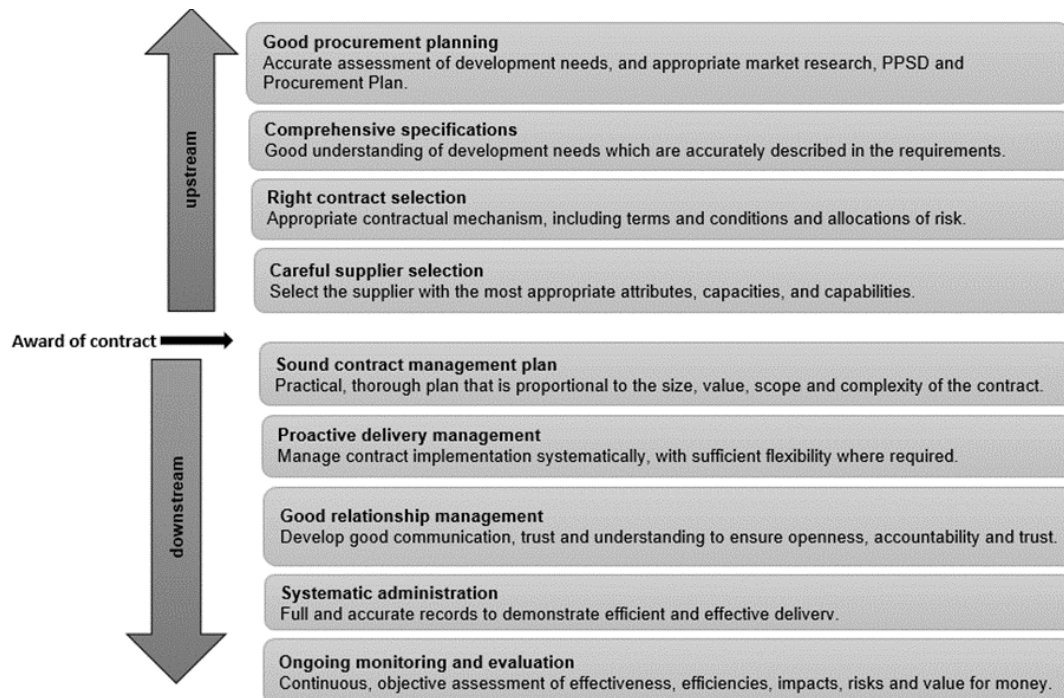


Figure 1: Upstream and Downstream Phase of Contracts

Source: Adapted from World Bank (2018)

2.3.3 The Role of a Contract Manager

The success of Contract Management depends on the planning process of how best to manage the contract, its implementation stages, or phases. The Contract Manager must understand the basics of the contract, how best to execute the contract and must also be able to evaluate the contract. It is good practice to appoint a Contract Manager on each contract and for large engineering contracts or projects an engineer, project owner and Contract Manager etc. The appointed Contract Manager on a project must possess the skills, qualifications, expertise, and experience to manage the contract effectively. The Contract Manager must be able to multi-task and the below Figure 2 is an illustration thereof.

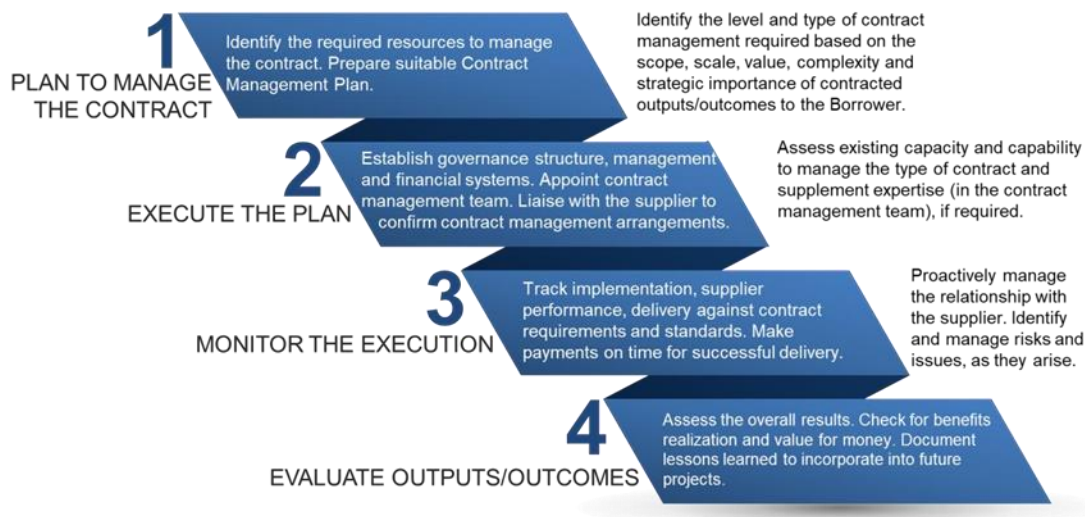


Figure 2: Role of the Contract Manager

Source: World Bank (2018)

The responsibilities of the contract manager are discussed in more detail below in figure 3 and in the text that follow.

2.3.4 Responsibilities of the Contract Manager



Figure 3: Contract Management Responsibilities

Source: World Bank (2018)

2.3.5 Hard and Soft Skills of an Effective Contract Manager

An effective Contract Manager must possess the following technical skills to ensure that the management of contracts adheres and complies with its contract conditions and perceived outcomes (World Bank, 2018):

- The Contract Manager must have the skills, knowledge and experience related to procurement, project management, legal knowledge, Financial Management data analytics and reporting as well as administrative skills.
- Effective Contract Managers must understand engineering contracts, the environment, safety, and skills in terms of how best systems can be utilised for the effective execution of the contract.

An effective Contract Manager must possess the required soft skills and must include leadership skills, decision making, communication, contract negotiation, time management and must always be outcomes focussed.

2.3.6 Principles of Good Contract Governance

The Procurement Guidance on Contract Management Practise issued by the World Bank highlighted the following factors to ensure that institutions maintain an effective Contract Management system within their organisation (World Bank, 2018):

- Organisations must clearly define the roles and responsibilities of all stakeholders from the initial stages until contract execution stages and that each role must be represented, and delegations should be in place for those who are tasked with duties.
- The Contract Manager must be able to track progress, monitor and maintain quality standards, budgets, invoicing, and forecasting.
- Levels of decision making should be escalated when necessary and regular checks should be performed in terms of the contract outcomes and outputs.
- The contract communication plan should be strictly adhered to, and all parties must agree to this plan.

- All management decisions that result in the change in the scope must be strictly monitored and communicated.
- Stakeholders must all be able to participate and trust relationships should be established.

Thai (2001) is of the opinion that when a procurement system is conducive for corruption then a shift should be made to focus and concentrate on the integrity, honesty, and transparency of its internal processes, reinforcing the above principles.

2.3.7 The National Audit Office (NAO) in London issued a Good Practice Framework for Contract Management in 2009, and the following key aspects were identified:

- Risks should be identified and managed.
- Roles and responsibilities should be assigned to all role players.
- Appropriate skills should be allocated where skills are required.
- Participation and identification of the various stakeholders are important.
- The relationship between the client and service provider should be managed effectively.
- The initial contract must be managed.
- The performance of all parties to the contract must be managed effectively.
- Contract administration must be evident.
- Room for negotiation for contract variations must be applicable.
- Dispute resolution processes should be in place and how to deal with disputes.
- Role players must be ethical, and all records should be kept confidential.

The below Contract Management Framework CMF from the UK National Audit Office (NAO) also highlights several areas for an effective Contract Management system.

2.3.8 UK National Audit Office Contract Management Framework

The UK NAO suggests there are 11 distinct areas when one wants to establish an effective CMF, namely,

- Planning and governance: This area should prepare for the contract and must include components for oversight and adherence to legislative prescripts.
- People: It is imperative that the right people are appointed on projects to ensure that Contract Management is managed effectively.
- Administration: The administration to manage the contract effectively must be in place.
- Managing relationships: Relationships both internally and externally should be always maintained.
- Managing performance: Contracts should be managed according to the stipulations in the contract and performances against that contract must be measured.
- Payment and incentives: Suppliers should be remunerated in line with the conditions that are stipulated within the contract.
- Risk: The risk associated with the contract should be managed entirely as well as all the contractual stipulations.
- Contract development: Any amendments to the contract should be handled with care and diligence as per the contract stipulations and conditions.
- Supplier development: Suppliers should be developed, and their performances should get measured against it.
- Supplier relationship management: Effective supplier relationships should be in place and a program should be in place that encourages supplier relationships.
- Market management: The market should be managed that could possibly impact the contract.

The above-mentioned Contract Management Frameworks of other countries are applicable to South Africa's current challenges and should South Africa apply these principles successfully, it will ensure an effective Contract Management system. Municipalities in general will benefit

when the above-mentioned areas of an effective Contract Management system are implemented.

The researcher will focus on the South African perspective on Contract Management, together with the frameworks and guidelines, and highlight the relevance and importance that the management of contracts are based on the same principles with the same outcomes in relation to Good Contract Governance in the next section.

2.4 South African Guidelines and Frameworks of Supply Chain Management

2.4.1. Supply Chain Management as a Process Theory

Figure 4 below illustrates the elements of SCM from the demand stage up until the disposal stage. It further refers to the government preferential procurement policy objectives, the supply chain performance, and the database of service providers. This model has been adopted for municipalities in South Africa.

According to Hugo et al. (2006), SCM can be defined as a management philosophy that seeks to integrate the internal linkages of the organisation with that of the potential service providers to create value for money.

National Treasury defines SCM as an integral part of Financial Management with the intention to bridge the gaps in relation to the traditional procurement methodologies versus the supply chain that are strategic (National Treasury, 2003:19).

Mentzer et al. (2001:2-3) define SCM as “the systematic, strategic coordination of the traditional business functions and the tactics across these business functions within a particular company and across businesses within the supply chain, for the purposes of improving the long-term performance of the individual companies and the supply chain as a whole”.

The World Bank and National Treasury adopted the Country Procurement Assessment Review and recommended the introduction of SCM in 2003, and it was with the view that it would increase the values associated with the procurement system (World Bank, 2003:9).

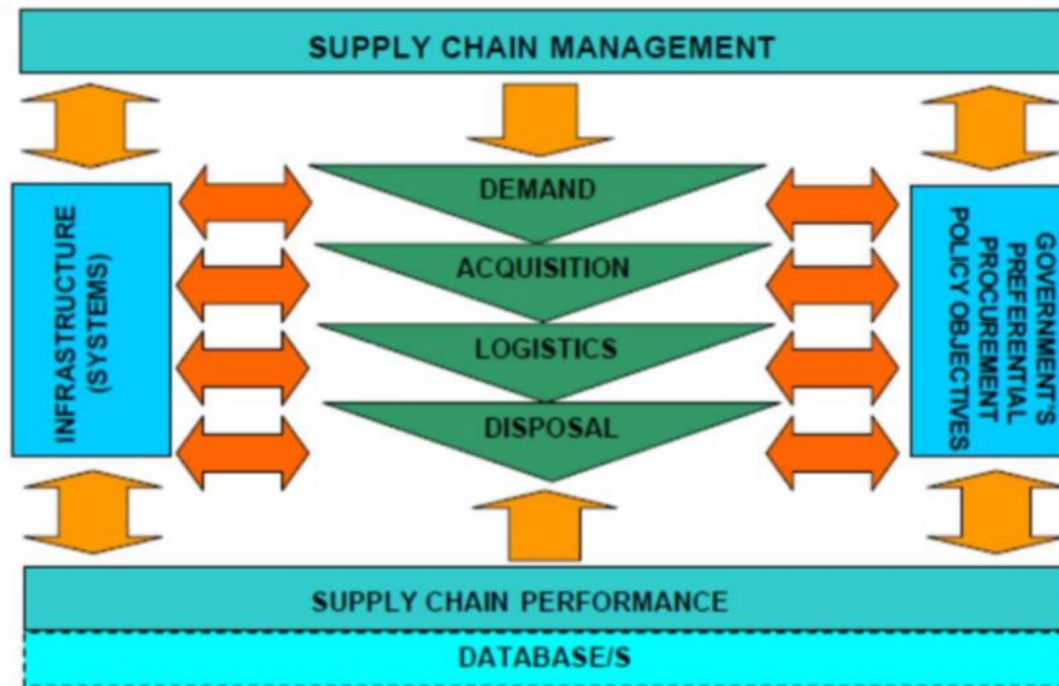


Figure 4: The SCM Framework

Source: National Treasury (2003)

2.4.2 Constitutional Pillars Governing Public Procurement

National Treasury issued general procurement guidelines that support the introduction of SCM in 2003 with the intention to implement the five pillars of procurement from the Constitution. In Figure 5 (below), the pillars of procurement that governs public procurement, are illustrated.

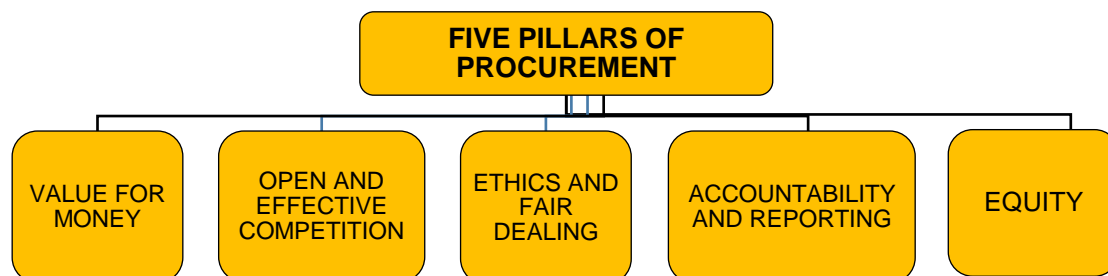


Figure 5: Five Pillars of Procurement

Source: Adapted from National Treasury (PowerPoint Presentation, 2006)

The municipal SCM model policy served before the cabinet on 10 September 2003 and was subsequently approved. It was gazetted on 5 December 2003 and became part of the National Treasury SCM Regulations. The institutionalisation of procurement reforms in South Africa commenced with the first adoption of a ten-point plan between 1995 and 2002. The government then focussed mainly on the implementation of the principles for good governance together with the introduction of the preferential procurement system.

There is a lack of uniformity and implementation of procurement policies, planning, procurement and budgeting processes and data on contracts awarded (National Treasury, 2008:31). SCM is based on international best practices and is configured to address procurement matters in municipalities (National Treasury, 2005:17). “The manifestation of unethical procurement practices will therefore relate to uncompetitive bidding, inadequate Contract Management, and the awarding of bids to employees and their family members non-disclosure by suppliers, no supporting documents for procurement awards, using incorrect preferential point systems and thresholds, and acceptance of fewer than three quotations” (Mazibuko & Fourie, 2017).

2.4.3 Contract Management

According to the National Treasury guide on Contract Management (August 2010), Contract Management relates to the acquisitions and disposal of goods and services that acquire verification from a management perspective in terms of the value, duration, complexity as well as strategic importance. Contract Management should ensure that information in terms of demand, logistics and performance management relating to the contract itself is available and implemented. Contract Management can be defined according to National Treasury as a contract which is an “agreement entered into by two or more parties, and the agreement can be enforced in a court of law”. As a result, Contract Management can be defined as “maintaining control or influence over the contractual arrangement between the organisation and the contractor or service provider including administering and regulating such agreement” (National Treasury, 2010:18).

“Contract Management” can be defined as safeguarding the implementation of a reciprocal agreement between all parties to require the fulfilment of their contractual obligations to ensure

that immediate action can be taken to effectively and efficiently manage any changes that may occur (Hugo et al., 2006).

2.4.4 Poor Contract Management

According to the National Treasury's Guide for Contract Management, the failure to implement adequate Contract Management can impact and result in paying for goods and services that never met the required standards that were set out in the contract (National Treasury, 2010:6). Contract sum totals can easily be inflated, and the paying of higher costs is the result. Communities will also become dissatisfied if projects are not completed in time, effectively referred to as a poor performance.

2.4.5 Challenges in the Contract Management Environment

According to the School of Public Leadership (SPL), improperly managed contracts may negatively impact service delivery and poor Contract Management may lead to very poor stakeholder relations and non-performance of service providers (Western Cape Government, 2018a). Furthermore, it creates a negative public perception as well as protracted legal disputes. It also contributes to poor services that are rendered, cost overruns and non-compliance to the required specifications (Western Cape Government, 2018a).

2.4.6 Penalties for Delays

According to the Penalty Act 15 of 1962 (Republic of South Africa, 1962), a penalty stipulation that may arise during the contract is enforceable by law. The penalty is used whenever the contractor is in breach, not only for damages but also the consequences thereof. In terms of the General Conditions of Contract (GCC) 2010, the contractor is liable for any penalties if the agreed works are not completed at the agreed date.

2.4.7 General Principles of the Law on Contracts

A contract is an agreement between two parties and the formation of a common intention that must be adhered to. The South African law does not require that an offer and acceptance must always be distinguished if an agreement, entailing the intention to be bound, has come about and the other requirements for the creation of a contract are present (Van Huyssteen et al., 2010).

2.4.8 Remedies for Breach of Contract

According to Merwe et al. (2003), three remedies become available to a contracting party by the operation of law when a breach of contract occurs. This includes a claim for performance of the contract, cancellation, and a claim for damages. The contracting party may apply to the court for an interdict to prevent the breach. The enforcement of remedies contained in a contract is nothing more than the enforcement of terms of the contract.

2.4.9 The Contract as the Source of an Obligation

Fouché (2015) states that Roman law refers to an undertaking amongst two parties where obligations must comply with requirements and that such obligations contain legal consequences in the form of claiming for performance and the duty to perform on the contract by the other party. A contract is an agreement that is made with the intention to create an obligation, which means that when the parties enter into a contract then they have the intention that the law will acknowledge that agreement and that legal consequences are attached to it. According to Fouché (2015:32), a valid contract means that a contract exists between two or more parties and that it complies with certain requirements that the law recognises. The consequences involve the rights and duties of both parties. A contract must comply with certain requirements to be classified as a valid contract and include the following:

- Serious intention to perform in terms of the contract
- Consensus and agreement
- Contractual capacity

- Lawfulness
- Performances on the contract
- Formalities

2.4.10 Misrepresentation of Contracts

According to Fouché (2015:56), it can happen that a contract is entered into by two parties wherein one party obtains the consent in an improper manner by means of misrepresentation, duress, or undue influence. This is then referred to as a defective contract and is voidable and can be contested.

2.4.11 Performance on Contracts and its Benefits

According to Moore and Hugo (cited in Hugo et al., 2006:284), the benefits of supplier performances through the implementation of effective Contract Management are evident as they result in the following advantages.

- Contracts can be monitored against their own performances in terms of the contract conditions.
- The contract specifications – in terms of deliverables, quality, quantity, and time on the contract – get monitored effectively.
- Supplier performances get monitored regularly.
- Compliance with the contract stipulations is optimally measured.
- Quality assurances get streamlined in the event of any disruptions.

2.4.12 Contract Life Cycle Management

According to the Aberdeen Group (cited in the Chartered Institute of Purchasing and Supply), the contract life cycle is seen as the systematic creation and analysis of a contract with the intention to maximise performance and reduce risk.

The life cycle of any contract consists of four logical phases and the below phases are useful in any contract:

- the pre-contract phase where planning for the contract plays a significant role.
- the contract negotiation phase.
- the contract operational phase, normally relating to the management, administration, and enforcement activities; and
- the contract close-out phase.

Figure 6 below depicts the roles and responsibilities of the various stakeholders that are involved in the life cycle of a contract, followed by a discussion on the KZN CMF:

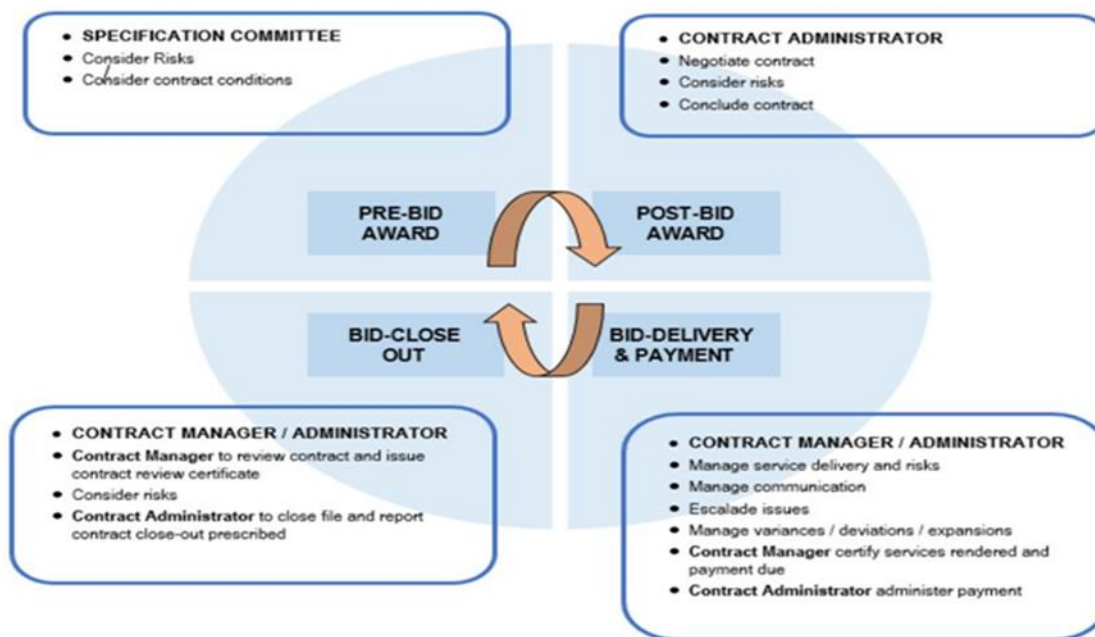


Figure 6: The Roles and Responsibilities of the Stakeholders Involved in the Life Cycle of Contracts

Source: Western Cape Department of Transport and Public Works, SCM instruction (2011).

2.5 Contract Management Framework of KwaZulu-Natal Provincial Treasury

The researcher seeks to illustrate with this section that the outcomes of the international frameworks and modules as well as our South African modules on Contract Management and all other municipalities in South Africa would be the same if the output was to have an effective Contract Management system. The researcher highlights the roles and responsibilities and the importance of adopting a policy and Standard Operating Procedure (SOP) for an effective Contract Management system in the following section.

The researcher illustrates below the roles and responsibilities of all stakeholders within the Contract Management system according to the current Contract Management Framework (CMF) of the KZN Provincial Treasury.

2.5.1 Role Clarification, Delegation of Responsibilities and Resourcing in KZN

The roles of all stakeholders need to be clearly spelt out to ensure an effective Contract Management system. Such roles should be informed by the complexity of the contract, as well as the levels of the risk associated and the duration of the contract. The roles and responsibilities should also be clarified within the Contract Management life cycle and, the below Table 1 illustrates these responsibilities.

Table 1: The roles and responsibilities in Contract Management.

ROLE	RESPONSIBILITIES
Contract Owner	<p>The Contract Owner should be tasked with the following:</p> <ul style="list-style-type: none"> (a) Monitor the service provider's progress and performance to ensure goods, services and/or works conform to the contract requirements. (b) Regular meetings with the service provider to review progress, discuss problems and consider necessary changes. (c) Consider project reports to advise the Contract Administrator of the performance or non-performance of the service provider and risks associated with the project. (d) Recommend the processing of payments consistent with the contract terms and conditions of payment.

	<ul style="list-style-type: none"> (e) Participate, as necessary, in developing the bid documents (specifications, scope and standards of delivery), as well as contract documents. (f) Resolve operational issues as they arise. (g) Generate change requests.
Contract Manager	<p>The Contract Manager should be tasked with the following:</p> <ul style="list-style-type: none"> (a) Establish procedures and guidelines for managing all contracts. (b) Authorize payments consistent with the contract terms and conditions of payment. (c) Manage risks and resolve disputes in a timely manner. (d) Maintain appropriate records. (e) Monitor performance data and address non-conformance. (f) Be the first line of dispute resolution. (g) Receive and consider performance reports from the service provider.
Contract Administrator	<p>The Contract Administrator should be tasked with the following:</p> <ul style="list-style-type: none"> (a) Keep all contract records, including bid documents, letters of awards, purchase orders, signed contract documents and amendments or variations to the contract. (b) Create and maintain the contract registers. (c) Manage contract amendments and variations – including scope variations, the extension of contract periods, renewal and others. (d) Institute penalties and issue warning letters to non-performing service providers. (e) Recommend the processing of payments after verifying performance with the Contract Manager. (f) Conduct regular legal and financial reviews of contracts. (g) Open and close projects on the Contract Management system.
Legal Services	<p>The Legal Services section should be tasked with the following:</p> <ul style="list-style-type: none"> (a) Establish the type of contract required. (b) Negotiate the terms of the agreement. (c) Draft contract documents based on Provincial templates and bid documents for specific contracts. (d) Oversee the signing of contracts.

	(e) Resolve disputes.
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(Source: Kwazulu-Natal Provincial Treasury, 2015)

A general discussion on SCM at municipal level follow in the section below.

2.6 Supply Chain Management Capacity within Municipalities – A Municipal Perspective on Supply Chain Management

The current state of SCM, and in particular contract management, can be contributed to the lack of skills and capacity within SCM units. The non-compliance with the implementation of a code of conduct, consequence management and delegations compromise local government, and the interest of the public are at risk (National Treasury, 2015:52).

The researcher will focus in this section on the above-mentioned statement to illustrate the relevance and importance to capacitate Supply Chain units.

The skills of SCM officials within the public sector are significantly lower than the skill levels of SCM officials in the private sector and the private sector invests substantially more in the development of its employees whilst government invests 1 per cent of its budget towards the development of public officials (National Treasury, 2015:52).

According to Ambe & Badenhorst-Weiss (2012:11011), SCM officials lack skills and the required competencies, and the result of the inadequacies contributes to unethical behaviour and the various issues raised of non-compliance within the SCM industry.

The Municipal Supply Chain Management Regulations form the basis on which SCM is implemented, institutionalised, monitored, and reported on within municipalities. The regulations empower the Accounting Officer to discharge all SCM functions and powers. The establishment of the SCM unit under the direct supervision of the CFO, the screening of vendors, the institutionalisation of the various tender committees as well as the ethical processes are outlined in the SCM Regulations.

2.6.1 State of Contract Management

According to the course material on Contract Management by the University of Stellenbosch, the following issues significantly contribute to the current state of Contract Management (Western Cape Government, 2018a):

- The lack of knowledge, skills, and capacity within the Contract Management domain.
- The non-compliance relating to the regulations and policy frameworks and the inadequate monitoring and evaluation of contracts.
- Another major factor would be the unethical behaviour, lack of accountability, fraud and corruption that are continuously being experienced within municipalities.

2.6.2 Code of Conduct for Public Servants in the Western Cape

The Western Cape government adopted a Code of Ethics, and it was implemented from the 1st of November 2010. This code is applicable to the public servants in the Western Cape and acts as a guide in terms of their behaviour. The main aim of this Code of Ethics is to inculcate trust and integrity by way of professional behaviour (Western Cape Government, 2018b).

2.6.3 Local Government Code of Conduct for Supply Chain Management Practitioners and Other Role-Players

In accordance with The Local Government Municipal Finance Management Act (MFMA) 56 of 2003 (Republic of South Africa, 2003), the Municipal SCM Regulations under Regulation 46(4) and 46(5) stipulates that each municipality or municipal entity should adopt the National Treasury's Code of Conduct and that this code should be binding on all municipal employees who are involved in the SCM processes of the municipality.

The Code of Conduct spells out the importance of the declaration of interest by SCM officials and all other role players. Practitioners are accountable for their respective behaviours and should be open in their dealings. Practitioners should also treat all information and documentation confidentially.

The SCM environment is highly regulated and thus needs officials that are competent in terms of the implementation as well as the interpretation of laws, regulations, circulars, practice notes that will enhance service delivery, and to be fully compliant in terms of all the governance requirements. Lack of controls directly implies that either sufficient staff is absent, or the SCM unit is not capacitated. The MFMA (56 of 2003) under Section 119 compels Accounting Officers to capacitate SCM units. SCM units that do not adhere to the minimum competency levels cannot perform an optimal function in ensuring that the constitutional provisions that govern SCM, as highlighted in Section 217 of the Constitution (1996), are adhered to.

The Auditor-General, during its annual audits, places significant reliance on its audit function in terms of laws and regulations pertaining to procurement and Contract Management. Irregular expenditure amounts to billions of rands, and a significant amount can be traced to SCM processes that were either compromised and/or SCM officials that did not comply with the requirements of the SCM Regulations.

2.6.4 Lack of Consequence Management

The corruption in municipalities between officials and suppliers and political office bearers are evident when no effective Contract Management system is in place with clear roles and responsibilities and a consequence management policy to deal with culprits.

Accounting Officers, if not acting decisively against all culprits who are found to be guilty of corruption, will further create a culture whereby officials can be corrupt. The Municipal Finance Management Act (MFMA) 56 of 2003 (Republic of South Africa, 2003) and MFMA (56 of 2003) Circular 68 should be used as a guide whenever monies should be recovered from officials who were found guilty. It is because very little or even nothing is done when implementing consequence management that the public perception might be a true reflection in terms of corruption within municipalities. The researcher argues that municipalities lack clear roles and responsibilities and that in many instances that delegations are not institutionalised or implemented.

2.6.5 System of Delegations

Municipalities should compile a set of delegations for officials who are fit for the purpose of their respective functions. Delegations that are issued to officials without any security or ethical clearance of the officials contribute largely to the dilemma that we are facing in municipalities. Municipal officials should, whenever delegations are issued to them, be made aware of the consequences of the delegations and training should be provided to all officials on those delegations in terms of their importance and consequences. The delegations must always be based on the principle of separation of power and duties. Officials should not be allowed to perform more than one function within the supply chain. Risk management in the municipality will also be much better and proper because controls will be implemented effectively, and risks would be mitigated. Whenever a municipality performs optimally with an effective Contract Management system in place, it would ultimately deliver services and value for money that will support the sustainability of the municipality.

2.6.6 Sustainable Local Government

Municipalities would not be able to sustain themselves if corrupt practices within the SCM environment are not controlled by means of the capacitation and recruitment of competent staff with high morals and sound ethics. Resources should also be utilised effectively, economically, and efficiently and stronger emphasis should be placed on keeping public officials liable and accountable for corrupt practices. Municipalities can only become sustainable when all the above-mentioned concepts, the framework for effective Contract Management and issues raised by the Auditor-General gets addressed, implemented, and institutionalised.

2.6.7 Public Interest in Spending Public Funds

According to Quinot (2009), several court judgements have confirmed the notion that the expenditure of public funds is subject to public law and that its relevance amounts to the manifestation of the public interest. The public loses its trust in government since no delivery of services can materialise because of corruption and ineffective procurement systems (Heggstad & Froystad, 2011:2).

2.6.8 Balancing Public Interest and Efficiency

Quinot (2009:243) argues that public interest and efficiency are not opposites but instead that it is in the public interest that government officials be efficient in carrying out their functions.

The above-mentioned concepts are all contributing factors that lead to the creation of an unethical environment if top management does not implement and adopt a Code of Conduct and consequence management. The continuous shortcuts to adhere to deadlines contribute to the current ineffective Contract Management systems. Municipal SCM units must be capacitated to implement the effective elements of SCM and Contract Management. The researcher will – in the next section – highlight the importance of good governance in relation to corruption and negative human behaviours.

2.7 Good Governance versus Corruption and Negative Human Behaviours

The foundation of an effective Contract Management system is premised on the adoption and upholding of good governance principles, procedures and processes. The researcher will – in this section – highlight several important concepts and examples that must be understood in relation to good governance. The researcher has highlighted the challenges pertaining to a lack of skills and capacities and how it further results in the lack of consequence management and the creation of a culture of ethics in the previous sections. The following are results from a lack of leadership when Code of Conducts and SCM are not capacitated, and when shortcuts to comply are taken at the service delivery and good governance interfaces. This noncompliance creates continuous gaps, and the Auditor-General, during its annual audits, will report on control deficiencies, a lack of accountability, roles and responsibilities and whether it is recurring from previous years. The researcher will conclude this section with recommendations on how to address the gaps that are identified.

All companies and or organisations consist of people with different skills and values as well as different characteristics. The success of organisations depends on individuals and the contributions that everyone makes within the organisation. According to some human relation theorists like Likert, McGregor and Bennis (n.d), people in organisations will strive for either personal or social satisfaction.

Human behaviour is the response observed before, during and after an action, and it can be directly or indirectly. According to Lavitt (undated), for that reason, organisations need to understand human behaviour to be able to control a person's behaviour or anticipate how a person will behave in a particular situation.

The misuse and malpractices pertaining to public funds normally find their origin in corrupt relationships. Corruption be an act of dishonesty whereby position and power are used to enrich a person. The researcher, therefore, suggests that the following be behaviour that directly opposes the principles of value and professional ethics as stipulated in Section 195 of the Constitution (1996), "Corruption is behaviour which deviates from the normal duties of a public role because of private-regarding (family, close private clique), pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence". This includes such behaviour as bribery (use of rewards to pervert the judgement of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses)" (Nye, 1967:966). The definition is supported by Ackerman (1999:89), who states that "corruption can be seen as the misuse of power and to the benefit of someone".

This misuse takes place occasionally when tenders are evaluated and adjudicated within municipalities. Corrupt practices that relate to procurement would be bribery, extortion, embezzlement, nepotism, fraud, kickback schemes, fronting – in Black Economic Empowerment (BEE) – companies and payments for poor or non-performing vendors (Krappe & Kallayil, 2003; Woods & Mantzaris 2012:123). According to Webb (2009), corruption is caused by various components, which include psychological, economic, and organizational factors. Poor leadership is a contributing factor to a lack of accountability, a lack of ethics, deficient control measures as well as the misuse of public resources. The researcher argues that the public lost trust in public institutions because of the above and that municipalities lack effective consequence management systems and procedures.

According to Kyambalesa (2006:108-109), corruption pertaining to greed, weak governance and lack of integrity and morality can be regarded because of poor governance. Fisman and Golden (2017:239) claim that the emphasis should be to improve monitoring and enforcement and that bribes should be very expensive and should discourage individuals from being corrupt. The argument is that officials, who should ensure compliance with laws and regulations, are turning a blind eye and are accepting bribes. The Office of Government and Commerce (OGC,

2008:16) states that “the public sector spends billions a year on the goods and services needed to deliver public services. To achieve value for money for the taxpayer, effectively managed procurements-properly planned and executed—are essential given the limited resources available to government ensuring value for money in procurement is key to ensuring the optimum utilisation of scarce budgetary resources.”

According to Kohlberg (1984), a person acquires morals and ethics from the way he or she was brought up, was educated, the person’s culture and beliefs and that society will decide whether the standards and Code of Conduct are acceptable. “Morals are defined on the basis of compliance with behavioural or corresponding base entrance; as a list of things to do and other things best avoided; therefore, morals are measured by the number of cases in which the individual follow the behaviour which is accepted morally, and avoid the wrong behaviour, and if the corresponding exceeds the offence or violation” (Samer, 2017). According to Wiehen and Olaya (2006), public procurement amounts to between 15 and 30 per cent of GDP. The damage caused by corruption is calculated at between 10 and 25 per cent, and up to 50 per cent of the total values of certain contracts (Wiehen & Olaya, 2006). Thai (2001) argues that a procurement system is conducive for corruption when no or minimal reliance is placed on integrity, honesty, and transparency.

Official disclosures or verification of an official’s financial standing, interest and past practices assist Accounting Officers in selecting committee members who are above reproach. The legislation allows for a precautionary suspension of employees that serves as a safety measure used by affected departments to allow for unhindered investigation, pending the institution of disciplinary procedures (Fourie, 2015:42).

2.7.1 Good and Effective Contract Management

The National Treasury’s Guide for Contract Management specifies that good Contract Management is evident when it optimises the delivery of large capital projects (National Treasury, 2010:6). Good Contract Management needs to specify management techniques and processes for any given contract. It encourages the achievement of value for money contracts. It further identifies any savings and improves the various elements of risk management. Good Contract Management provides clear records for audit purposes and encourages communication between all parties.

2.7.2 Code of Ethics

The lack of a code of good ethics within municipalities can be a contributing factor to the escalation of corrupt activities in the procurement system. The Code of Ethics should stipulate how the municipality will be dealing with corruption between officials and suppliers. It must also state the roles and responsibilities of councillors – and stress the Code of Conduct for councillors as per the Municipal Systems Act (MSA) 32 of 2000 (Republic of South Africa, 2000). It is clear from the MSA that councillors cannot, and should not, interfere in the administration and are barred from being present at any tender evaluation process, even as observers. The Code of Ethics should place reliance on consequence management, disciplinary actions and reporting to the police if officials are found guilty of colluding with service providers. The Code of Ethics should also compel all officials to declare any business interests and to recuse themselves from any SCM processes whenever the integrity of the system might be compromised. The Code of Ethics should be adopted by the institution, and the top management should ensure that all officials adhere to it. This Code must be adopted at the top management level, and it must form part of all officials' daily routine and be placed on all officials' personnel files. The Code of Ethics must be reviewed annually by top management, and the culture of good ethical governance should be a core value of the organisation.

Ethical and unethical behaviour are major contributing factors that ensure that corrupt practices – the SCM environment, are prevalent. The lack of appointing competent staff with a high level of ethical standards could be one of the reasons why so many investigations and findings on corruption, bribery and fraud are made within municipalities. Corrupt officials often become complacent and then corrupt practices get institutionalised and more and more officials are getting involved, some knowingly and others unknowingly. This is a major dilemma, not only for municipalities but also for several public institutions and governments in general.

A few laws and regulations were promulgated that intend to bring the culprits to book. Corruption in municipalities is organised, well planned and the lack of controls creates an environment for officials to partake in corrupt activities within the SCM environment. The researcher will solicit views and opinions of how best government should act against officials who are guilty of corrupt practices and whether all the corrupt practices impact service delivery and to what extent. The researcher argues that municipalities are not committed enough to deal with, reprimand and/or keep officials accountable for any wrongdoing. The researcher is of the

opinion that municipalities lack effective systems and processes to deal with consequences for noncompliance and whenever negative behaviour was detected.

2.7.3 Examples of Corrupt Practices in Municipalities:

2.7.3.1 *Bribery*

When money or favour is given, or promised, to influence the judgement, or conduct, of a person who is normally in a position of trust. An example would be to turn a blind eye or misplace valuable information. (Cornell Law School, 2020).

2.7.3.2 *Fraud*

Fraud is the unlawful and intentional making of a misrepresentation causing actual prejudice. An example in the procurement environment would be to inflate quotations and invoices for services not rendered.

2.7.3.3 *Conflict of Interest*

Conflict of interest occurs when an entity or individual becomes unreliable because of a conflict between personal, or self-serving, interests on the one hand and official duties and responsibilities on the other. An example would be to be present while tenders are evaluated, or adjudicated, when the recommended service provider is a close family member.

2.7.3.4 *Extortion*

Extortion is the wrongful use of actual force, or intimidation, to gain money. An example would be to threaten members of the Bid Evaluation and Bid Adjudication Committees (BAC), even if it is non-compliant.

2.7.3.5 *Favouritism*

Favouritism is the practice of giving unfair preferential treatment to one individual, or group, at the expense of the other. An example would be to favour a tender for someone who is directly connected to you.

2.7.3.6 *Abuse of Privileged Information*

The abuse of privileged information is the wrongful misuse of a person's power at the expense of another person by leaking confidential information. An example would be to leak documents before they would be officially discussed or awarded.

2.7.3.7 *Abuse of Power*

Abuse of power is when a person in a position of trust and power wrongfully uses his power to influence decisions. An example would be to instruct a subordinate to deviate from the original decision, and to favour your outcome.

The above definitions and types of corrupt practices influence the SCM environment because its motive is private gain and self-enrichment due to unethical behaviour, and it compromises provisions as set out in Sections 152, 195 and 217 of the Constitution (1996). These types of procurement corruption influence the SCM environment, and the researcher suggests that South Africa as a country, and government and municipalities, have major challenges in dealing with corrupt practices. It appears to be the reason why the national media, forensic investigations and various commissions are currently demanding answers from municipalities pertaining to corruption in the awarding of tenders?

2.8 Corruption in Public Procurement

According to Erasmus and Pillay (2015), the then-officer-in-charge of the Special Investigating Unit (SIU), Willie Hofmeyr, reported that approximately R25 billion to R30 billion of the government's procurement budget got stolen by means of tender corruption during 2013. Corruption Watch, between January 2012 and January 2014, received a total of 465 complaints

alleging procurement irregularities and in particular tender corruption. Corruption Watch released its annual report on corruption trends for 2020. An indication was presented that the number of corruption cases has increased and that 1995 corruption cases concerning civil organisations were reported, with approximately 1 591 the previous year. It displays an increase of 400 more cases and that a staggering 55 per cent of the cases occurred after the National State of Disaster was declared in March 2020 (Erasmus & Pillay, 2015).

2.8.1 Corruption in municipalities

Corruption Watch 2015, in its annual report, further displayed that the most prevalent form was the misappropriation of resources, which accounted for 35 per cent, and that municipal employees embezzled funds that were meant for service delivery. The report also showcases that tens of millions of rands of taxpayer money were unaccounted for and that funding was meant for the construction of sports facilities, roads, and infrastructure projects. According to the annual report of Corruption Watch (2015), another 19 per cent of the listed corruption cases were related to procurement (Erasmus & Pillay, 2015).

Corruption Watch suggests the following red flags in a detection table below, which can assist in mitigating potential corrupt practices in the procurement environment.

Table 2: Stages of the tendering process and potential corrupt practices.

<u>The pre-tendering process:</u>	
Red flags	Related type of corrupt activity
Acquiring unnecessary items	Corruption
Manipulation of the procurement threshold	Unjustified to circumvent awarding
Biased evaluation criteria or processes	Manipulation of bids, corruption
Extreme pre-qualification requirements	Excluding potential bidders that might qualify.

Unclear, misleading or incomplete tender specifications	Uncompetitive bidding, corruption
Tender specifications are unclear	Excluding potential bidders that might qualify, corruption
<u>The tendering process:</u>	
Tendering red flags	Tendering type of corrupt activity
Failure to make bidding documents available	Non-cooperation in having bidding documents available
Urgent and inadequate notice to bidders	Urgent Short or inadequate notice to bidders
Excluding potential bidders, corruption	Excluding potential bidders, corruption
More than one tender awarded to the same Companies	Corruption
Rotation of successful bidders	Collusive bidding
Unrealistic high/low bids	Collusive bidding, corruption
No transparency during bid-opening of bids	Manipulation of bids, excluding potential successful bidders, corruption
Disqualifications of bidders not in terms of required specifications	Excluding potential successful bidders
Obligation to appoint a service provider	Corruption
Budget match cost estimate of the project	Uncompetitive bidding, corruption
Unnecessary delays in awarding of tenders.	Manipulation of bids, corruption
<u>The post-award process:</u>	
Post-award red flags	Post-award type of corrupt activity

Use of unknown agents or subcontractors	Corruption
Complaints regarding poor quality goods, works, or services	Failure to meet contract specifications
Continued acceptance of poor-quality goods, works, or services	Corruption
Delivery of poor-quality goods, works, or services	Failure to meet contract specifications
Questionable contract changes	Falsely inflated or duplicated invoices, corruption
Questionable invoices	Falsely inflated or duplicated invoices
Absent or questionable documents	Falsely inflated or duplicated invoices

(Adapted from Erasmus & Pillay, 2015)

2.9 The Role of Auditor-General

The aim of the Auditor-General is to express an audit opinion in terms of the financial position and financial performance of municipalities. The primary goal is to build public confidence. The findings within the audit reports are communicated to the municipality. The municipality, when in agreement with the Auditor-General, will improve and implement an audit action plan. Any non-compliance to laws and regulations resulting in irregular expenditure must be disclosed in the annual financial statements of the municipality. The researcher will – in this section – highlight various reports from the Auditor-General and a consolidated general report on contract management findings.

2.9.1 Audit Reports of the Auditor-General and its Findings on Contract Management During the 2012/2013 Audit in KwaZulu Natal

The Consolidated General Report on the audit outcomes of local government for a number of years identified the following most prevalent findings in terms of inadequate Contract Management during its 2012/2013 SCM audits:

- The Auditor-General indicated that no written contract was signed by delegated officials and that payments were made, and goods and services were received without any written contract in place.
- Inadequate contract performance and monitoring were in place and contractors could not deliver on the terms of the contract.
- No reasons were tabled to council pertaining to the amendments or extensions on contracts, it was non-compliant with the MFMA (56 of 2003) prescripts, and the council was not properly informed.
- Contracts were also extended to prevent any competitive bidding processes that constituted unfair and uncompetitive bidding.
- The Auditor-General also highlighted that the performance of the contractors was not monitored monthly.

The audited contracts were also not in accordance with the GCC that clearly stipulate provisions for termination.

According to the Auditor-General South Africa (2012), it was evident that shortcomings in the way contracts are managed caused and impacted the delays, wastage, and fruitless and wasteful expenditure, and such cases directly impacted service delivery. The Auditor-General of South Africa (AGSA) therefore, reported that accountability and consequence management should be enforced within the organisation.

2.9.2 The audit performed at KwaZulu-Natal Municipalities

The Kwazulu-Natal Provincial Treasury conducted a study on its municipalities and found numerous audit queries related to weak Contract Management systems. It also found that very little understanding exists of Contract Management by role-players. It also highlighted that no

systems are in place to monitor contractor performances, and no system of Contract Management is in place. Several contraventions occurred where payments were made without any start or end date to contracts, which is in contravention with the SCM prescripts and that service providers were appointed who are not registered on the Central Supplier Database. The Western Cape Municipalities' findings are discussed for a subsequent period of 2018/2019 below.

2.9.3 Western Cape Municipalities 2018/2019 Audit Outcomes and Corrective measures at underperforming municipalities.

The Auditor-General of South Africa (AGSA) briefed the standing committee on local government on the 14th of July 2021, on the audit outcomes for the province. It mentioned that 13 out of the 30 municipalities obtained an unqualified audit and that 15 municipalities received unqualified audit opinions with findings. The Auditor-General reported that no disclaimers or adverse opinions were issued for the 2018/2019 financial years within municipalities within the Western Cape. Irregular expenditure increased from R680 million to R2.7 billion.

The business executive of the Auditor-General of South Africa (AGSA) for the Western Cape informed the standing committee that about 55 per cent of the 30 municipalities were non-compliant with material procurement laws and regulations. Material findings concerning procurement and Contract Management were 41 per cent, and irregular expenditure increased from R680 million to R2.7 billion.

The Business Executive illustrated that the challenges that municipalities encounter within the governance context are the following (WCPP, 2020):

- The conflict between political oversight concerning interference.
- The lack of Accountability.
- Non-Compliance to laws and regulations in terms of ethical codes, and to take responsibility for compliance.
- The conflict between the cost of compliance and service delivery.
- The compliance with the legislative guidelines and policies.
- The lack of improvement of internal controls.

- Internal control deficiencies.
- The lack of the implementation of a practical consequence management strategy.
- The challenge by not acquiring competent and qualified and competent persons.

The researcher reflected that both provincial Treasuries, namely KwaZulu-Natal and the Western Cape, have challenges at their municipalities, which have been recurring for several years and will continue if accountability and the lack of consequence management are not addressed. The successes of any effective Contract Management system, as could be seen from the international modules, are built on effective ethical leadership, accountability and consequence management. The Auditor-General (AGSA) reports continuously that municipalities lack accountability and consequence management, and it was evident in both Treasuries' reports as well. The researcher will – in the section below – address the gaps that could be summarised from the content of Chapter Two.

2.10 Summary and Gaps within the Contract Management Environment

The researcher agrees with the stipulations in Chapter 14 of the National Development Plan (NDP) 2030, i.e., that several significant interventions should be considered as a priority to address the gaps within the SCM environment; the following are the most relevant to this study and speak to the NDP.

- The security of those who blow the whistle on corruption in terms of their protection and stricter measures should be put in place.
- The oversight of the procurement functions should be strengthened.
- An accountability framework should be institutionalised, which will keep senior officials liable for corrupt actions.
- Public officials should be prohibited from all tender processes if any business interest is detected, and corrupt officials should be held liable for all expenses incurred.

The gaps that exist could be because of the lack of controls, a lack of transparency and the type of materials findings made by the Auditor-General. This can be due to a lack of capacity and competent SCM staff. The legislative environment governing SCM, and its regulations, places

huge responsibilities on Accounting Officers to capacitate SCM units. The Accounting Officer is guilty of an offence if no significant SCM system is in place and could face imprisonment of up to 5 years, according to Sections 173 and 174 of the MFMA (56 of 2003). According to Business Insider, as published on 11 November 2020, more than a hundred people have now been arrested for corruption in South Africa and include some of the most prominent figures. Below are just a few high-profile individuals that were arrested by the Hawks, according to the Business Insider.

- The Hawks arrested four former senior Gauteng government officials for alleged tender irregularities committed at the Gauteng Department of Health in 2007.
- The Hawks arrested the former North-West Municipal Manager, Cassius Sebatane Sejake, after allegedly failing to follow processes in the awarding of tenders of almost R6 million between 2018 and 2019.
- The Hawks arrested Phumza Phoshee Gambula, a company director who allegedly defrauded the OR Tambo District Municipality with more than R4.8 million.
- Philip Truter, former VBS Mutual Bank Financial Officer entered a plea bargain with the National Prosecuting Authority (NPA). He will testify against his co-accused in the theft of R2.2 billion.
- Vincent Smith, the former ANC member of Parliament (MP), handed himself over to the police and appeared in court on charges of fraud and corruption in relation to money that he allegedly received from Bosasa. As for the Western Cape, some cases that were reported on are:
 - The current and former mayors (2021) of Beaufort West appeared in court on charges of tender corruption worth R 600 000.00 and were released on bail of R 5 000.00 each.
 - Martin Noel Pietersen was convicted on five counts of contravening several provisions of the Local Government Municipal Finance Management Act 56 of 2003 (MFMA) amounting to R 2 082 093.00.

2.11. Recommendations to Address the Gaps

Soreide (2002:35) recommends several strategies that could possibly lead to the reduction and mitigation of corruption in procurement by way of the following:

- That an independent unit is established with professionals, and that officials within the procurement units be constantly rotated.
- That a performance system is implemented, and that a Code of Conduct is institutionalised.
- Documentation should be kept safe for audit purposes, and consequence management for all stakeholders should be very clear.

The prevention of corruption in public procurement should be by way of the creation of awareness pertaining to the consequences and anti-corruption seminars (Van Vuuren, 2005:117). South Africa needs governance structures like internal audit, external audit, forensics, and audit committees that must strengthen oversight, and consequence management that is supported by legislation (Mahlaba 2004:87). Pillay (2004:603) is of the view that South Africa needs to improve internal controls that will detect unethical behaviours. South Africa needs to strengthen the internal controls by way of separation of duties and the rotation of critical staff on large projects.

2.12 Conclusion

The literature reviewed in Chapter Two presented several expert opinions and views from current literature as to what corruption entails; firstly, as a definition and then the types of corruption and finally the influences it has on the SCM environment. The researcher commenced this chapter with Financial Management and guiding theory and then the World Bank and other international guidelines and modules. The South African guidelines, frameworks of SCM and the process theory followed. The researcher then focussed on the capacity of SCM within municipalities, the code of conduct, delegations – and how it impacts on good governance, corruption and negative human behaviours. The section also dealt with the role of the Auditor-General and the comparisons between the Treasuries due to the lack of

accountability and consequence management that are reported by the Auditor-General over the past years.

The literature reviewed suggests that a correlation exists between non-compliance to SCM legislative requirements and emphasised the fact that the National Treasury issued the Code of Conduct as the ethical foundation for operations within the SCM environment. It is argued that the acceptance of bribes, kickbacks and all other types of corrupt practices and favours are detrimental and influence the conduct of all who have the power to make decisions in the awarding of tenders. The lack of accountability, consequence management and unwillingness to hold officials accountable have been stressed as key. The constitutional provisions of Sections 217, 195, and 152 are disclosed to be compromised because of the negative human behaviour discussed and the fact that it leads to ineffective Contract Management within municipalities in the Western Cape. This section concludes with gaps that were identified and recommendations to address these gaps.

The researcher will in the next chapter highlight the relevant regulatory framework that is currently applicable to this study.

CHAPTER 3: KEY LEGISLATIVE AND POLICY FRAMEWORKS

3.1 Introduction

The researcher, in this chapter, will highlight and summarise all the key relevant legislative and policy frameworks that address corruption and corrupt practices in local government. The national government has enacted various laws and regulations to deal with corruption and this chapter will list and elaborate on the legislative and policy framework. The research problem in terms of corrupt practices and their influence should be read against the backdrop of the legislative and policy framework.

3.2 National Treasury Competency Framework

National Treasury developed material that will enable and support municipalities in line with the prescribed Competency Regulations, Gazette 29967, June 2007. The unit standard focuses on the introduction to SCM within the public sector. It also further highlights the various elements that support a world-class SCM system and also the elements of a performance management and risk management system. National Treasury also issued a Contract Management Framework (CMF) and Contract Management Guide (CMG) that seeks to empower municipalities with the implementation of an effective Contract Management system.

3.2.1 National Treasury: Contract Management Framework

National Treasury issued, in August 2010, a CMF to all municipalities. The purpose of the CMF seeks to set out the requirements in the management and accounting for contract agreements. The CMF is a practical framework only whilst the practical guidance on applying the framework is prescribed in a separate CMG. The CMF requires organs of the state to ascertain a broad approach to Contract Management. It should include the identification of all contracts, the classification of contracts for management purposes and the management of all stages of the contract life cycle. The CMF intends to ensure improvements within the Financial Management, which could lead to a reduction in costs, an increase in revenue and the enhancement of service delivery.

However, the CMF does not necessarily cover the technical application of accounting or the details in terms of contract law. The purpose and focus are to ensure that policies and procedures and techniques are implemented. The CMF, as alluded to earlier, seeks to cover the management practices in terms of contracts in general and does not focus on the discussion of the procurement stages of Contract Management.

The CMF, for Contract Management overall, is responsible for the management of all contract agreements during the contract life cycle and correctly accounts for all the envisaged contracts.

3.2.2 National Treasury Contract Management Guide

Further to the CMF, National Treasury issued a CMG that is seen as an extension to the framework. (National Treasury, 2010). The purpose of the CMG is to provide practical guidance to municipalities and other public sector institutions on how best to implement the CMF. The CMG recommends that institutions make use of the six stages that include the following:

- to undertake a review of the CMF,
- to work from the guide,
- to finalise the gap analysis of the contract life cycle,
- to prepare an action plan,
- to implement the plan and
- to seek improvements on the plan regularly.

On a broader level, the CMG deals with the following, and it is essential to note the identification, recognition, planning, budgeting, oversight, resourcing of contracts and the document, relationship and performance management of contracts. It further also looks at the payments cycles, risk management, and policies of Contract Management.

The CMG distinguishes between the various types of contracts, and inclusion of the SCM contracts are included (National Treasury, 2010b:25-32). The CMG further recommends that the legislative framework and the international Contract Management practice notes seek to oblige organisations to implement and institutionalise better Contract Management oversight

on approved contracts. The main purpose of the oversight seeks to ensure that contracts get better enforced, the monitoring will be better, Contract Management role players are identified, it defines the roles and responsibilities, delegations, implementation and alignment and continuous training on Contract Management. The evaluation of contracts and the cost-benefit of the contracts for effectiveness and efficiency is also one of the guide's purposes.

3.2.3 Government Procurement: General Conditions of Contract

National Treasury (2010) – one of the institutions that must incorporate General Conditions of Contract (GCC) as part of the tender documents – issued the GCC. The aim and purpose are to create an awareness that the government tenders, when awarded, are subjected to the GCC and that all stakeholders must be aware of the rights and obligations. Specific contracts can also be awarded that are subject to special conditions, and service providers need to adhere to both the general and the special conditions of the contract.

The GCC incorporates a significant field of sections that are important in executing the management of the contracts. It stipulates that contracts need to conform to the specification. The contract should disclose contractual information, documentation, the performance of the contract and securities that relate to the obligations of the contract. Inspection and testing of the commodities and items should be rejected if non-compliant. Packaging for the goods should be compliant, and the documentation must be compliant when delivered. The GCC consists of several fundamental provisions that need to be adhered to, and these provisions are binding on the institution and the service provider. It includes the following as some of the most critical provisions: insurance, penalties, terminations, obligations, amendments, payments, settlements, liabilities etc.

The following legislative prescripts are relevant within the supply chain environment and in particular to the non-compliance or negative behaviours within the Contract Management field.

1. Directorate for Priority Crime Investigation (Hawks) – Section 17C of the South African Police Service Act 68 of 1995 (Republic of South Africa, 1995).
2. The Constitution of the Republic of South Africa Act 108 of 1996 (Republic of South Africa, 1996).

3. Auditor-General of South Africa (AGSA) – Constitution of RSA, Act 108 of 1996 (Republic of South Africa, 1996).
4. Public Service Commission (PSC) – Constitution of the RSA, Act 108 of 1996 (Republic of South Africa, 108 of 1996).
5. Special Investigating Unit (SIU) - Special Investigating Unit and Special Tribunal Act 74 of 1996 (Republic of South Africa, 1996).
6. National Prosecuting Authority (NPA) – National Prosecuting Authority Act 32 of 1998 (Republic of South Africa, 1998).
7. Promotion of Access to Information Act 2 of 2000 (Republic of South Africa, 2000).
8. Promotion of Administrative Justice Act 3 of 2000 (Republic of South Africa, 2000).
9. Protected Disclosure Act 26 of 2000 (Republic of South Africa, 2000).
10. The Competition Amendment Act 15 of 2000 (Republic of South Africa, 2000).
11. The Preferential Procurement Policy Framework Act 5 of 2000 (Republic of South Africa, 2000).
12. Public Service Anti-Corruption Strategy, January 2002.
13. The Broad-Based Black Economic Empowerment Act 53 of 2003 (Republic of South Africa, 2003).
14. The Local Government: Municipal Finance Management Act 56 of 2003 (Republic of South Africa, 2003).
15. Prevention and Combating of Corrupt Activities Act 12 of 2004 (Republic of South Africa, 2004).
16. Supply Chain Management - A guide for Accounting Officers / Authorities, 2005.
17. Policy to Guide uniformity in Procurement Reform Processes in Government, 2005.
18. National Treasury Circulars and Practice Notes, 2008.

3.3 Acts:

3.3.1 Directorate for Priority Crime Investigation (Hawks) - Section 17C of the South African Police Service Act 68 of 1995 (Republic of South Africa, 1995).

The main aim of the Hawks is to investigate serious crimes of corruption and commercial crimes in terms of Sections 17B and 17D of the SAP Service Act, 1995 as amended by the South African Police Service Amendment Act, 2008 (Act No. 57 of 2008).

3.3.2 The Constitution of the Republic of South Africa 1996

The Constitution (1996) lays the foundation for all laws in our country and is referred to as the supreme law. It compels public organisations to procure, in terms of Section 217(1), goods and services within a system that is open, fair, cost-effective, equitable and competitive and is also commonly known as the constitutional pillars of procurement. National government has an obligation to issue a framework that will advance categories of preferences in terms of Section 217(3) of the Constitution (1996). Section 195(1) of the Constitution (1996) states that Public Administration must be governed by a high standard of professional ethics. It further stipulates that resources must be utilised efficiently, economically, and effectively. It also stipulates that services need to be provided impartially and fairly, equitable and should not be biased. Further to that, it also stipulates that the administration must be accountable. Section 152 deals with the objects of local government and stipulates that local government needs to provide for a democratic and accountable government to the local communities.

3.3.3 Auditor-General of South Africa (AGSA) - Constitution of RSA, Act 108 of 1996 (Republic of South Africa, 1996).

The AGSA is known as a Chapter 9 Institution in terms of the Constitution (1996). The main aim of the Auditor-General is to express an audit opinion in terms of the financial position and financial performance of municipalities.

3.3.4 Public Service Commission (PSC) – Constitution of the RSA, Act 108 of 1996 (Republic of South Africa, 108 of 1996).

The main aim of the PSC commission is to ascertain whether a high standard of professional ethics is maintained by public officials.

3.3.5 Special Investigating Unit (SIU) - Special Investigating Units and Special Tribunal Act, No. 74 of 1996

The main objective of the SIU is to recover any losses that the state may have suffered as a result of corruption. The SIU works closely with the NPA and Asset Forfeiture Unit in terms of prosecutions.

3.3.6 National Prosecuting Authority (NPA) - National Prosecuting Authority Act 32 of 1998 (Republic of South Africa, 1998).

The NPA is established in terms of the National Prosecuting Authority Act 32 of 1998, and the National Director of Public Prosecutions is appointed by the president and consists of seven units.

3.3.7 Promotion of Access to Information Act (Act No. 2 of 2000)

The aim of this Act 2 of 2000 (Republic of South Africa, 2000) is to allow any person to obtain information on decisions that were taken in order to be able to ascertain whether any form of corruption took place. Service providers can approach the municipality and file what is normally referred to as a PAIA application. Municipalities will then submit all tender committee meetings and decisions to the service provider who completed the PAIA application.

3.3.8 Promotion of Administrative Justice Act (Act No. 3 of 2000)

The aim of this Act 3 of 2000 (Republic of South Africa, 2000) is to ensure that fair procedures are in place whenever decisions are taken that directly affect the public or service providers.

Persons aggrieved by decisions taken have the right to request reasons why they were unsuccessful.

3.3.9 Protected Disclosure Act (Act No. 26 Of 2000)

The main aim of the Protected Disclosure Act 26 of 2000 (Republic of South Africa, 2000) is to protect those who report corruption and any form of criminal or dishonest behaviour. This Act 26 of 2000 (Republic of South Africa, 2000) also protects all those who blow the whistle and ensure that they do not get victimised.

3.3.10 The Competition Amendment Act (Act No. 15 of 2000)

The main aim of this Act 15 of 2000 (Republic of South Africa, 2000) is to regulate competition and to provide for competitors to fairly compete for tenders in public. Collusion, price-fixing and price manipulation by bidders are also investigated by the Competition Commissioner and if found guilty the Competition Tribunal will issue large fines.

3.3.11 The Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)

The aim of the Preferential Procurement Policy Framework Act 5 of 2000 (Republic of South Africa, 2000) is to allow for preference points to be allocated to suppliers who were previously disadvantaged. The Act 5 of 2000 (Republic of South Africa, 2000) allows for 20 and 10 preference points maximum that is added to the lowest acceptable tender. The tenderer scoring the highest number of points for price and Broad-Based Black Economic Empowerment (BBEEE) automatically gets the tender – unless objective criteria are advertised as a condition of tender. The court on the contrary expressed in many cases that municipalities should not allow for the double preference of service providers by awarding tenders to potential service providers after points were given for preference in terms of the 80/20 and 90/10 preference point system to a bidder that does not score the highest points for price and BEE points because it is regarded as unconstitutional.

3.3.12 Public Service Anti-Corruption Strategy, January 2002

The main aim of the Public Service Anti-Corruption Strategy, 2002 is to fight corruption in the public sector. The purpose of the Public Service Anti-Corruption Strategy is to fight corruption through support actions and to fight corruption in terms of prevention, investigations, and prosecution.

3.3.13 The Broad-Based Black Economic Empowerment Act (Act No. 53 of 2003)

Act 53 of 2003 (Republic of South Africa, 2003) aims to broaden the economic base by encouraging black people to actively participate in the procurement system by means of bidding for tenders at all levels.

3.3.14 The Local Government: Municipal Finance Management Act (Act No. 56 of 2003)

The main aim of the MFMA (56 of 2003) is to improve Financial Management within the municipal sphere and for municipalities. Section 78 of the MFMA (56 of 2003) allocates responsibilities to all managers who are responsible for a budget to plan and use resources effectively, economically and efficiently. The MFMA (56 of 2003), under Chapter 11 from Section 110-120, addresses all the SCM matters, compliance, reporting and framework within which municipal SCM units operate. Section 117 of the MFMA (56 of 2003) specifically deals with the role of councillors and that they should not be involved in any tender evaluation meetings, not even as observers. The MFMA (56 of 2003), under Section 32, deals with the recovering of irregular, fruitless and wasteful expenditure and the establishment of a public accounts oversight committee that must investigate all matters in terms of irregular, fruitless and wasteful expenditure. The MFMA (56 of 2003), further under Sections 173 and 174, deals with offences and penalties, as it is regarded as an offence if the Accounting Officer does not implement an SCM system, and the penalty, if found guilty of such an offence, is 5 years imprisonment.

The MFMA, further in Section 33, spells out the procedures for dealing with contracts with budgetary implications for more than three years and that is outside of the MTEF. Section 116

of the MFMA stipulates the procedures for when contracts need to be extended and when to report on the performance of contracts.

3.3.15 Prevention and Combating of Corrupt Activities Act (Act No. 12 of 2004)

The main aim of the Prevention and Combating of Corrupt Activities Act (PCCA) 12 of 2004 (Republic of South Africa, 2004) is to deal with corruption in public. This Act specifically, and explicitly, reprimands public officials to refrain and abstain from any form of gratification. The object of this act is basically to expect officials to report corruption, to deal with corruption and to improve on measures to combat corruption. The Act 12 of 2004 (Republic of South Africa, 2004) states that a person will be guilty of an offence if he or she accepts any forms of gratifications. Section 34(1) of the Act 12 of 2004 (Republic of South Africa, 2004) further requires that a senior person who is aware that a crime has been committed of more than R100 000.00 must report it to the police. A sentence of 10 years, if in a high court, or 3 years, in a magistrate's court, if corruption is not according to Section 34(2) of the Act 12 of 2004 (Republic of South Africa, 2004). The register for tender defaulters should also be established by the National Treasury.

3.3.16 Supply Chain Management – A Guide for Accounting Officers / Authorities, 2005

Accounting Officers must reject tenders if any suspicion exists that the service provider might have been involved in corrupt practices (National Treasury, 2005).

3.3.17 Policy to Guide uniformity in Procurement Reform Processes in Government, 2005

The main aim of this Policy is to ensure that all public officials that are dealing with procurement matters do not compromise the procurement system by not declaring conflicts of interest and the need to always eliminate corruption.

3.3.18 National Treasury Circulars and Practice Notes, 2008

National Treasury issues circulars and practice notes from time to time that provide uniformity and clarify challenges. National Treasury issued Circular 43 that deals with the restriction and blacklisting of suppliers who perform poorly on contracts. National government has established several independent agencies that have powers to deal with corruption in the public domain, for example the SIU, the AGSA, etc.

3.4 Conclusion

The researcher has highlighted all the relevant primary legislation that South Africa has enacted over the last 20 years in this chapter and included National Treasury's CMG, CMF and the GCC. The researcher has argued that the procurement environment is over-regulated and that municipalities have challenges to comply with all the legislations versus service delivery. The researcher argues that the shortcuts, taken by officials that lead to negative behaviour, are due to the lack of qualified engineers and senior officials who can manage contracts effectively. The researcher is also of the opinion that it would be difficult to generalise and accept that the negative human behaviour is due to corrupt practises, but it may rather be due to the lack of skills and competent staff with experience and qualifications that lead to the negative human behaviour within the Contract Management system. In Chapter One this becomes more apparent when considering the legislation listed in Chapter Three. The court cases over the past three years might be a sign that public officials will ultimately have to honour all the legislative prescripts of the national government and may even illustrate that the "over-regulation" to curb corruption may ultimately be effective.

CHAPTER 4: RESEARCH AND METHODOLOGY

4.1 Introduction

The researcher focussed, in Chapter Two, on the literature pertaining to Financial Management, Contract Management, which included what is considered good and poor Contract Management. The literature that was identified also highlighted the challenges within the Contract Management environment, the penalties, remedies, and the contract life cycle that is imperative for Contract Management. In Chapter Three, the researcher provided the legislative and policy frameworks and listed and summarised several Acts relevant for the purposes of this study. The researcher will in this chapter focus on the research and design as well as methodology that is relevant to this study and with the purpose and aim to gather information from experts and senior officials within the Contract Management domain. The researcher will also target community-based organisations that are familiar with the Municipal Budget and IDP and elicit their understanding and perception of whether municipal funds result in value for money procurement. The responses to the populated questionnaire by the selected audience will also test the general perception of the community. The researcher will also provide the data collection methods, coding, sampling, instruments' data analysis and interviews that were conducted in this study as well as the ethical considerations.

4.2 Research Design and Methodology

The research design seeks to provide answers for the research study in terms of the methodology that was used by the researcher whilst the focus will be on achieving its goals, objectives and being in a position to answer the research question (Webb & Auriacombe, 2006:589). This study is empirical because it has addressed the current challenges within municipalities pertaining to Contract Management, and a survey was used to obtain qualitative and quantitative feedback. The researcher relied on the expert opinions of individuals who are currently actively involved in the various Contract Management stages. The data that was collected was observed by the researcher due to the fact that different audiences were approached and the responses to the questionnaires are normally not measured precisely (Morra Imas & Rist, 2009:294).

Babbie and Mouton (2006:104) describe a research design as a plan of how the researcher intends to conduct the research to solve the research problem. The researcher thus intended, with the research design, to determine whether negative human behaviour leads to ineffective Contract Management in municipalities within the Western Cape. The researcher also intended to ascertain, via the research design, whether municipalities lack skills, expertise and competence. Another very important concept that the researcher intended to establish, with the research design, is to further ascertain whether municipalities lack consequence management and accountability.

“Qualitative research is an exploration of what is assumed to be a dynamic reality” (Webb & Auriacombe, 2006:592). “When the focus is on contemporary phenomena within a real-life context” (Schurink & Auriacombe, 2010:436). The Chief Financial Officers, Head of Engineering Services, Supply Chain Managers and Contract Managers are dealing with the challenges of Contract Management in their respective municipalities daily.

Research studies that are conducted extensively, and in-depth, can be regarded as a case study according to Perri and Bellamy (2012:3).

Research methodology normally deals with the research process, the procedures and processes that will be used during the research study, according to Babbie and Mouton (2006:75). This study is empirical because it consists of a literature review, coupled with an empirical investigation. The researcher relied on the completed questionnaires as the basis for the analysis of the data, and to check whether it corresponds and complements its problem statement, research question and purpose of the study.

4.3 Study Setting

The study was conducted within a selected number of municipalities, which included the city of Cape Town, one high-capacity, one medium-capacity and one low-capacity municipality within the Western Cape. All mentioned municipalities’ respondents included a Chief Financial Officer, Head of Engineering Services, Supply Chain Manager and either a Contract Manager or Senior Accountant Contract or an Administration section that handle and keep all contracts. The Researcher made use of qualitative research as mentioned previously and collected data together with the sampling and coding of the data. The participants from the sampled municipalities were requested to complete the questionnaires as per the required category. The

Western Cape consists of thirty municipalities, and all do have an SCM unit, however, with various challenges within the Contract Management sections. The researcher forwarded the identified and specific questions to the respective target audiences to allow them an opportunity to decide whether they are comfortable with the scheduled interview and its content.

4.4 Sampling and Coding

It is not always practical to research a full population because it will be time-consuming and will not make sense economically. For that reason, it is better to reduce your number of participants to a manageable number, according to Burger and Silima (2006:656-667), arriving at what is commonly known as a sample. The utilisation of a sample of the population for the purposes of data is important. The researcher, for this reason, opted for purposive sampling to get a representative outcome in terms of the full population. It is based on the judgement of the researcher's knowledge, its elements as well as the nature of the study (Babbie & Mouton 2006:166).

Purposive sampling seeks to identify those individuals who are relevant to the research question and who will be in a position to participate (Bryman, 2012:418). It is therefore relevant and beneficial to make use of purposive sampling because the researcher will use his judgement in terms of who will be the best representatives (Babbie & Mouton, 2001:643).

The Western Cape, as one of the nine provinces in the country, is geographically substantial and consist of 30 municipalities, which include 1 Category A, 24 Category B and 5 Category C municipalities. The research study area was confined to the Western Cape with the City (Category A), one high capacity (Category B) and one district municipality (Category C). The identified municipalities have SCM units, which together with individuals or sections are responsible for Contract Management. The success of Contract Management depends greatly on the roles and responsibilities of the various stakeholders who are involved with the contract from the beginning until the end of the contract. Some municipalities have a separate unit that deals with all the contracts within the municipality and with all the contracts being kept in the records section of the administration. Contract administration and monitoring are implemented from the SCM units.

The coding of the data was categorised along with three selected audiences with specific questions posed to every target audience. The data was captured in the sequence of the listed and identified questions per category. All data received was populated in a specific category, to minimise duplication. The captured data was also stored electronically per category, and it streamlined the data analysis process further.

4.5 Data Collection Methods

The utilisation of a conversational interview can be regarded as the foundation for collecting data when deciding on qualitative research when implemented via a semi-structured interview (Lee, 1999:63).

The semi-structured interviews are relevant to meet the research objectives and allow the interview to be open for gathering further important information (Auriacombe, 2010:477). The data was collected via interviews that were coordinated and conducted via Microsoft Teams due to the challenges that the current State of Disaster Regulations pertaining to Covid-19 and social distancing pose. The conducting of interviews is a very reliable tool for collecting data and allows the interviewer an opportunity to obtain information on the research topic (Jarbandhan & Schutte, 2006:674).

The researcher will have the advantage of face-to-face interviews to ascertain and obtain better cooperation subject to the established trust (Leedy & Ormrod, 2009:88).

The researcher informed the participants in advance before engagement, and all the participants gave consent by completing the consent forms that were distributed to them ahead of the scheduled date and time of the interview. The researcher scheduled the interviews with the agreements of participants, in terms of the date and time, and with their full consent. The appointment was for that reason also diarised via Microsoft Outlook. The duration of the interviews was scheduled for between 15 to 30 minutes, and the participants were given the opportunity to decide on either a face-to-face interview or via Microsoft Teams. Some decided on teams and others on face-to-face. The interviews commenced on time and the researcher thanked the participants for participating and expressed gratitude for their inputs and willingness of those who voluntarily agreed to partake in the interview. The researcher also explained the purpose of the interview and the research objectives as well as the problem statement. The participants were divided into three distinct target audiences that included

senior officials from the selected municipalities, experts within the field of Contract Management, and a few organisations that will normally partake in the public participation process in terms of the IDP and budget processes within municipalities. After the completion of the populated interview questions, the participants were afforded the opportunity to complete the consent forms. The researcher allowed for questions, and the participants were given the opportunity to comment and to give further inputs relevant to the research topic and problem statement (Bryman, 2012:487).

The researcher also used audio recordings for the interviews to be able to accurately document the answers, which support the coordination of the data analysis (Bryman, 2012:482). The recordings also allowed the interviewer to give more attention to the answers given by the participants, to allow for follow-up questions, and not to be distracted by the taking of notes during the interview (Bryman, 2012:482). The researcher questioned the participants at the commencement of the interview whether they are willing to give consent for the researcher to record the interview, of which no one objected.

4.5.1 Document Analysis

The analysis of documents seeks to substantiate data that was collected during an interview. The researcher must be able to analyse the documents because it will qualify the framework to be utilised during the research. The researcher was in possession of the supporting documents for clarification purposes (Yanow, 2007:411). All the documentation used during the interview was designed with consideration and sought to substantiate the problem statement and research objectives. The questionnaires were populated in specific categories with a focus on specific audiences, and the questionnaires were well designed to reach the target audience.

4.5.2 Semi-structured Interview

The researcher targeted specific officials, which included the Chief Financial Officers, Head of Engineering, the SCM Managers and Contract Managers. The semi-structured interviews assisted the researcher in obtaining data by way of a questionnaire, and it sought to ultimately justify the hypothesis and objective of the study. The semi-structured interview is most suitable because the researcher is involved during the research process (Robson, 2011:285). The

researcher will, with the receipts of the inputs and comments of the selected audiences, incorporate the answers and comments into this research study. The interviews focused either on the capacity, knowledge and skills of those officials involved in Contract Management, or the legislative environment and Contract Management stages. The questionnaires that were utilised during the interviews sought to ascertain whether consequence management and the accountability of Accounting Officers, and role players during the Contract Management stages, are prevalent within the municipality.

The researcher also intended to seek substantiation for some of the fundamental challenges that exist currently in Contract Management within municipalities, with the questions and the manner it was prepared for the experts within the field of Contract Management. The focus group of specialists was sensitised in terms of their professional understanding and knowledge of Contract Management and whether the municipal sphere indeed possesses the skills and knowledge and whether Accounting Officers should be held accountable and liable for non-performance on contracts.

The responses from the community stakeholders were populated to give the researcher a better understanding in terms of the community's perception of the municipalities' handling and dealing with the perceived negative conduct, and in particular corrupt practices.

The identified officials within the municipalities were asked to reflect on the current challenges – in particular, the legislative environment and corrective measures when non-compliance was identified by the Auditor-General. Emphasis was placed on the skills, expertise and qualifications of role players. The roles and responsibilities, of all those involved in the Contract Management stages, were also highlighted as well as the perception that municipalities are over-regulated.

The second part of the semi-structured interview with the identified municipal officials focused on the negative behaviours, non-performance and drafting of unbiased specifications and again whether a lack of consequence management is evident within the municipality.

4.6 Data Analysis

The process of identifying patterns and searching through data is normally referred to as data analysis, and it involves examining, categorising, and evaluating coded data and the reviewing thereof (Neuman, 2011:467). Auriacombe and Mouton (2007:455) are of the opinion that data analysis takes place from the inception stage. Qualitative research focuses on data analysis and is commonly used for case studies (Bryman, 2012:578-579). The researcher has identified specific outcomes for the selected target audiences that are relevant to the research study and its objectives. The researcher also divided the target audience to be better equipped to interpret and analyse the populated data (Bryman, 2012:580).

The researcher has pre-populated the questionnaires in a specific sequence to assist when the data needs to be categorised according to the answers given. The lack of capacity, skills, lack of consequence management and negative behaviours was all categorised to align it easily with the problem statement and research question.

4.7 Ethical Considerations

“Ethics concern the morality of human conduct” (Edwards & Mauthner, 2012:2). The researcher's ethical conduct should always protect the individuals, their workplaces and communities (Israel, 2015:2).

Remenyi (2013:172) believed ethical conduct and approval have their own challenges and limitations for the researcher during the collection of data stages. Its primary cause would be to obtain organisational approval and consent for the researcher to be able to commence when collecting data from identified individuals (Remenyi (2013:172). Researchers, when interviews are undertaken, need to consider at least four ethical considerations, which include consent, harm to the participants, deception, and privacy (Lutabingwa & Nethonzhe, 2006:695).

All participants were informed that participation is voluntary and that they have been identified as role-players within the Contract Management domain, either as municipal officials and/or external specialists or as a community organisation that has an interest in the operations of the municipality, and in Contract Management.

Participants were also requested to complete the consent forms that were given to them ahead of the scheduled interviews. Data was collected through interviews; no harm to the participant was reported or perceived. The interviews were conducted via Microsoft Teams, and some were conducted face-to-face. All interviews were conducted without any interference or problems, and no interviews were stopped due to the participant becoming uncomfortable with their participation. At the end of the interviews, the participants were thanked and asked for any comments.

4.8 Conclusion

In this chapter, the researcher emphasised the research design as well as the methodology that is relevant to this study. The aim of this chapter was to gather information relevant to the study from various audiences who are involved daily within the contract management domain, including senior officials from municipalities, experts as well as community-based organisations. The researcher has also highlighted the importance and relevance of the data collection methods, coding, sampling, data analysis and interviews that were conducted as well as the ethical considerations that needed to be adhered to. The researcher also illustrated that this study is empirical in nature as it addresses current challenges; the researcher used a survey to obtain qualitative and quantitative feedback wherein reliance was placed on the expert opinions from specialists within the contract management domain. The intention of the research design was to determine whether negative human behaviour leads to ineffective Contract Management in municipalities within the Western Cape. It was also imperative for the researcher to ascertain whether municipalities lack skills, expertise and competence within the Contract Management system. The researcher also aimed to ascertain whether a lack of consequence management and accountability might be a contributing factor to ineffective Contract Management. The participants were informed of the scope of the interviews in advance, and all the participants were requested to give consent by completing the consent forms, and interviews were scheduled accordingly. The researcher will focus – in the next chapter – on the results of the collected data.

CHAPTER 5: RESEARCH FINDINGS

5.1 Introduction

The researcher, in the preceding chapter, focussed on the research design and methodology that was used when the selected audiences were approached for collecting the data. The results of the collection of data, and its findings, are presented in this chapter. The data was collected from internal stakeholders, who are dealing daily with the successful implementation of Contract Management within the municipality, through a semi-structured interview. This chapter will also present the results of semi-structured interviews that were conducted with experts in the field of contract management. This chapter seeks to substantiate the identified objectives of the study as mentioned in Chapter One.

5.2 Case Study: Stellenbosch Local Municipality

The Stellenbosch Municipality is located at the edge of the City of Cape Town border. The area of jurisdiction includes the towns of Stellenbosch, Franschhoek and several rural hamlets such as Wemmershoek, La Motte, De Novo, Kylemore, Pniel, Johannesdal, Languedoc, Groot Drakenstein, Muldersvlei, Klapmuts, Elsenburg, Raithby, Jamestown, Koelenhof and Vlottenburg and most with a population of less than 5 000. The Municipal areas also include a number of informal settlements. Stellenbosch is the second oldest town in South Africa, dating back to 1679 when an island in the Eerste River was named Stellenbosch. Stellenbosch's population amounts to 192 879 people, with 52 374 households.

The municipality has a complement of 1 178 permanent staff consisting of 5 directorates, which include Engineering Services, Planning and Economic Services, Finance, Corporate and Community Services. The Municipality have a fully-fledged SCM unit that is responsible for the effective implementation of the elements of an SCM system, which include Demand, Acquisition, Logistics, Contract, Performance, Risk and Disposal Management. On the approved organigram, the Manager: Contract Management reports directly to the Senior Manager: Supply Chain Management.

The following audit findings for 2018/2019 were reported at the Stellenbosch Municipality in terms of the audit performed on Contract Management which included commitments that were

overstated within the Contract Register. A finding was also reported on penalties, hold back payments and poor and non-performance of vendors which must be monitored effectively and that stricter controls should be implanted.

The following audit findings were reported to the city in terms of the audit performed on Contract Management and included contracts with expenditure, post the contract expiry dates. Contracts have been extended beyond 3 years without following Section 33, in some cases. Poor planning for tenders that led to contracts being extended in certain cases. Inadequate testing of pricing. The need for quicker turnaround times with repeat contracts to avoid deviations. A lack of vendor management was also highlighted. In the case of the Cape Winelands District Municipality, the over payment of a contract value was reported as an audit finding.

5.2.1 Document analysis

The study focussed on the Contract Management system within the municipality and the operational processes and procedures. The function of the SCM unit in relation to the execution of the Contract Management System as well as the roles and responsibilities of every role player.

5.2.1.1 The Contract Management System and Audit Findings

The Contract Management section, since its establishment as a unit within the SCM, commenced with the compilation of a contract register for all contracts within the municipality. The data within the contract register reflects all the contract awards, which include the contract starting date and ending date as well as contract award. All contracts within the municipality were redirected to a central point within the Contract Management unit that is in SCM. All awards approved by the BAC are kept at the Contract Management section, and all requisitions captured by departments are verified against the decisions taken at the BAC for correctness and compliance. The Contract Management unit consists of a senior accountant, Contract Management practitioner, two additional verification clerks as well as one administrator responsible for the performance monitoring and ratings on all contracts. Departments complete monthly performance sheets on the progress of contracts in relation to the performance and

non-performance of vendors. In cases where departments are not satisfied with the performance of vendors, such vendors will get a score equal to one. This score means that the service provider did not perform officially, and any further score on the project equal to one will result in non-compliance, and the process of blacklisting will commence as prescribed within the SCM policy and such listings vary from 6 to 36 months. The Contract Management unit annually submits all reconciliations on contracts awarded and contracts committed for audit purposes.

5.2.1.2 Contract Management Policy

The Stellenbosch municipality adopted, in June 2017, a Standard Operating Procedure (SOP) for Contract Management, and this specific SOP was workshopped by the municipality's internal audit unit with all departments. This policy defines Contract Management and furthermore seek to address the following activities within the Contract Management System:

- The drafting, amending, negotiating, and signing of contracts.
- The administration and management of contracts throughout the lifespan of each contract.
- The assistance in the performance monitoring and compliance during the contract period.
- The implementation and management of the terms and conditions of the contract for the contract duration.
- The verification of payments, sureties, guarantees, insurances as well as increases and decreases of orders.
- The extensions and terminations of contracts.
- Contract variations and price increases.
- Advice and legal opinions on contracts.
- Filing of contracts and related documents.
- Maintaining a contract register.

This Contract Management policy, when implemented successfully, will demonstrate that the municipality has optimised its delivery of services. It will specify management techniques and processes for all types of contracts. It will also encourage the achievement of value for money and the improvement of the performance of vendors. The Contract Management policy seeks to enhance the mitigation of risks by providing clear and complete records for audit purposes, with the intent to encourage communication between all parties to the contract.

The Contract Management policy was customised, and all users of the policy understand their roles and responsibilities. It commences with the drafting of the contract, and the SCM compiles the tender document that will be the binding document between the municipality and the successful bidder. The SCM communicate the outcome of the decisions of the BAC to the successful and unsuccessful bidders. The final awards made by the municipality's BAC is subject to the 14 to 21 days appeal, which allows bidders the opportunity to lodge a complaint or appeal against decisions taken by the BAC. The SCM is responsible to arrange a face-to-face meeting between the successful bidder and the municipality's Head of Department (HOD) as contract owner and SCM who are responsible to facilitate these meetings. In instances when a Service Level Agreement (SLA) is needed, then such an SLA will be drafted. The payment process, performance monitoring and records management functions will commence after the official signing of all documents.

The Contract Management policy is not currently effectively implemented, and the municipality encounters various challenges with its implementation. It is because no clear roles and responsibilities are identified that a lack of ownership exists, the question of who must take the responsibility for enforcing the contract. The legal department is responsible for all contracts within the municipality including SCM contracts.

5.2.1.3 Contract Management Review Policy

The current Stellenbosch Municipal policy has not been reviewed, but the Contract Management section is in the process of amending the policy with significant changes. This is due to the Auditor-General's consistent identification of non-compliance during the past two years in relation to the underperformance of contractors. The Auditor-General also identified projects that were put on hold and projects that were behind schedule as significant areas of non-compliance, if not addressed urgently. All these issues are incorporated in the renewed

policy, which will be implemented once it has been workshopped with all the departments. The audit Findings for CM for Stellenbosch municipality are detailed below.

The Researcher identified three municipalities – Stellenbosch Municipality, as discussed above, the City of Cape Town and the Cape Winelands District Municipality – as a target area for interviews. To provide context to the other two municipalities, a summary of audit findings with respect to CM are provided below.

5.2.1.4 Interviews

The researcher identified, as mentioned earlier, three audiences during its collection of data stage to highlight the current reality within municipalities on Contract Management. The target audiences were divided into sections. Section A focussed on the internal senior staff within the selected municipalities and included the Chief Financial Officer, Head of Engineers, Supply Chain Manager and Contract Manager. Eleven questions were posed to this specific section, and it was divided into two parts. The answer given to each question posed will be grouped, by the researcher, for ease of referencing and for the comparison of answers given for each question. For example, the answer to each question given by the CFO will be grouped etc. For the second group, the researcher identified experts within the Contract Management domain with vast experience, expertise and knowledge of Contract Management. The researcher populated the 8 questions under Section B and the identified professionals were requested to motivate every answer given. The third group that the researcher identified were community-based organisations and 11 questions were posed to this audience.

5.2.1.5 Profile of the Participants

The researcher identified senior officials within municipalities and concentrated on one metro municipality, one high-capacity municipality and one district municipality within the Western Cape. These identified officials have a significant number of years of experience on a senior level as well as in Contract Management and its importance. The identified senior officials included the Head of Engineers, who is the contract owner of large capital projects, Chief Financial Officers, Supply Chain Managers as well as Contract Managers. The researcher also interviewed scholars with tremendous academic credentials within the Contract Management

domain within the Western Cape and national level. Community-based organisations identified during the IDP processes were also targeted and requested to complete the questionnaires. The interviews commenced with the internal staff with the identified municipalities and all answers given by the participants are presented below, which is referred to as Section A.

5.3 Section A: Part A

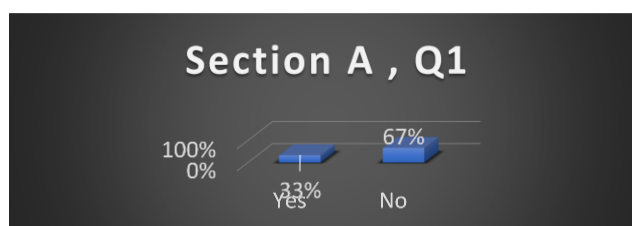
The officials that were interviewed are all currently working within the municipal environment and within their daily work routine deals with Contract Management. The researcher conducted interviews with Chief Financial Officers, Head of Engineering Services, Supply Chain Managers, and officials responsible for Contract Management within the identified municipalities. The following responses are captured from the returned and completed questionnaires and the semi-structured interviews that were conducted. The researcher requested the audience to respond to the two overall questions, and it was answered in two parts of which part one consisted of six questions and part two of five questions.

- To understand the constitutional and legislative framework for Contract Management and how this could affect human behaviour (i.e., SCM norms and standards).
- To describe how human behaviour influences the stages of Contract Management and Contract Management outcomes. (compliance, legislation, lack of accountability, consequence management, corruption, etc.).

Question 1. Do municipal officials, involved in the implementation of Contract Management, understand the legislative and constitutional framework that governs good and effective Contract Management? What is your opinion?

Table 5.1: Section A, Q1: Do municipal officials, involved in the implementation of Contract Management, understand the legislative and constitutional framework that governs good and effective Contract Management.

Answer	Count	Percentage
Yes	4	33%
No	8	67%
	12	100%



Source: Own compilation (2021)

According to table 5.1, most of the participants, at 67 per cent, indicated that municipal officials do not understand the legislative and constitutional framework for Contract Management. The remaining 33 per cent indicated that municipal officials do understand the legislative and constitutional framework for Contract Management.

Twelve respondents from twelve surveyed provided their responses, a 100 per cent response rate. The responses received from eight of the twelve participants to the above question, or 67 per cent, indicated that municipal officials involved in Contract Management do not understand the legislative and constitutional framework that governs good and effective Contract Management. The response of Participant Two, to Question 1, was that municipal officials regard Contract Management as a less important element, and that non-compliance – for example – in terms of contractor performance monitoring is ignored when initiated by the SCM. Participant Three made mention of the following, “The legislative framework that governs Contract Management in particular Section 116 (2) (b) of the MFMA (56 of 2003) states that the performance of contractors should be monitored on a monthly basis, but this seems to be conveniently ignored and deemed trivial”. Departments experience challenges in understanding the legal provisions that governs contract management. This is a new way of implementing Contract Management and that was previously centred mainly around the quantitative delivery of the services rendered. National Treasury, as stated in Chapter Two, defines SCM as an integral part of Financial Management and intends to bridge the gaps in relation to the traditional procurement methodologies versus supply chains that are strategic (National Treasury, 2003:19).

Participant One’s response to Question 1 was that “In my view officials do understand the legislative and constitutional framework and qualified the response with the fact that Contract

Managers often entrust the full execution of the project totally to the discretion of an appointed service provider and neglect to manage the process of deliverables, deadlines, contract terms and conditions”. Another response was that all officials participating in the SCM processes understand the legislative and constitutional framework and that training needs to be provided to all the other officials involved in Contract Management. One participant indicated that officials involved in the execution of Contract Management does not have sufficient knowledge of the legislative environment and indicated that only those officials who have completed the Municipal Competency Levels would understand it. Officials tend to only understand things that will affect their sections and showcase very little understanding of the whole picture, which is to perform the functions as prescribed in Section 152 of the Constitution (1996), which deals with the objectives of Local Government. “All allocated services must be performed by the municipality as per the minimum service standards and that the rendering of services must be performed legally and on time. SCM cannot alone look at the legal matters, but the municipality must be legal, and services must be delivered legally on time” (Participant 6, 2021).

The response of Participant Eight to Question 1 was that “There exists a GAP in the National Treasury and CIDB (Construction Industry Development Board) with little guidance on how to manage contracts and that officials have a basic understanding.” The respondent believes that there is insufficient guidance on how to manage contracts and that complex contracts are also subject to the GCC whilst it is more suited for goods than for services. From the above, it appears as if municipal officials focus more on the procurement phase than on the Contract Management phase. According to the SPL, as stated in Chapter Two, improperly managed contracts may negatively affect service delivery and poor Contract Management may lead to very poor stakeholder relations and non-performance of service providers. It may also lead to protracted legal disputes (Western Cape Government, 2018b).

According to the Guide for Contract Management (2010), as mentioned in Chapter Two, failure to implement adequate Contract Management can affect and result in paying for goods and services that never meet the required standards (National Treasury, 2010). SCM can be defined as a management philosophy, as detailed in Chapter Two, that seeks to integrate the internal linkages of the organisation with that of the potential service providers to create value for money (Hugo et al., 2006).

Most of the participants who are senior officials responsible for the implementation of Contract Management within the municipality responded that municipal officials do not understand the

legislative and constitutional framework. The remaining participants, who are in the minority, responded that municipal officials understand the legislative and constitutional framework for good and effective Contract Management.

Question 2. What would you suggest are the challenges for municipal officials in adhering to the legislative prescripts that govern Contract Management?

The responses from each participant, as stated above, are presented below as it was during the interview.

Participant One's response to Question 2 was that "Even though adequate systems are hard to find, a reluctance in respect of accountability exists and that there are no performance management consequences for non-performance". The Auditor-General, as mentioned in Chapter Two, reported that municipalities lack accountability and consequence management whenever non-compliance was identified during audits and that accountability and consequence management should be enforced within the organisation (Auditor-General, South Africa 2012).

The response from one of the participants was that "The municipality is trying to marry legislation with a contract for example: If a contract expires within 3 years then it expires, but in terms of the General Conditions of Contract (GCC), it does not expire, and that the contract only expires after the completion certificate was issued. SAICE allows for variation orders whilst the MFMA (56 of 2003) 116 prescribed 15 and 20 per cent via circular 62. Anything outside 116 and Section 33 becomes irregular and is regarded as a challenge within the municipality" (Participant Two, 2021). This is a general challenge that is experienced within the municipality daily.

The contract life cycle is seen as a systematic creation and analysis of a contract with the intention to maximise performance and risk and that the contract consists of four logical phases, which include the pre-contract phase and the contract negotiation phase.

"A lack of leadership does exist and that institutional buying in of Contract Management is seen as a challenge together with the misalignment between roles and responsibilities, service delivery versus compliance and the lack of consequence management" (Participant Three, 2021). Service delivery has been extended to the marginalised due to the leadership in

municipalities and local government cannot perform even the basic functions that previously constituted its reason for existence and has lost credibility (De Visser, 2009:11) – stated in Chapter Two.

The challenge is how to manage contracts well and to comply simultaneously with the strict legislation was a pertinent comment from one of the Contract Managers. The upstream and downstream phases of a contract, as stated in Chapter Two, describe the outputs and outcomes of a contract that are managed through the process of contract implementation. The result of effective Contract Management ensures that value for money and outcomes of the contract is achieved. The successful implementation of contracts is influenced by way of upstream activities that are managed during the procurement planning, evaluation, and adjudication of contractors (World Bank, 2018).

One of the responses, to Question 2, from a participant was that “The legislative and regulatory frameworks are complex to navigate and align with the requirements of specific standard forms of contract often leading to findings related to deficiencies in Contract Management, planning, and execution. Managing governance process timelines and alignment to contractual timeframes for instructions and approvals are almost impossible and leads to numerous findings related to irregular expenditure” (Participant Five, 2021).

Participant Six’s response to Question 2 was that “In terms of the challenges indicated that it is difficult for officials and role players to operate as a team that must consist of all applicable role players and all working to the same goals and all accepting responsibility for reaching this goal. All (Finance, Engineers, SCM, Administration etc.), must work to the same goals of effecting contract results, which MUST be as per Regulation 10: System of Demand Management, of the SCM Regulations. Demand does not only refer to procurement but to render a complete project” (Participant Six, 2021). The success of Contract Management depends on the role of the Contract Manager, as stated in Chapter Two, the successful planning process of how best to manage the contract, its implementation stages and or phases (World Bank, 2018). The procurement of projects, and services, is governed by multiple pieces of legislation, which was a challenge and that SCM is over-regulated, was the answer given by another engineer.

Participant Eight’s response to Question 2 was that “A lack of clear concise guidelines exists and that the current guidelines are too general in nature. Very limited focus on infrastructure Contract Management together with a lack of training. Almost no formal training by

(Construction Industry Development Board and National Treasury on how municipal officers should manage complex infrastructure contracts (Information Technology contracts (IT) New Engineering Contracts (NEC), Joint Building Contracts Committee (JBCC) and Federation Internationale des Ingenieurs - Conseil (FIDIC) contracts. One size fits all approach, no differentiated approach between small, medium, and large municipalities. Large Gap between the private sector understanding of contracts and municipalities which results in litigation, project delivery failures, delays, unnecessary mediation, and arbitrations. Very little is done by NT and CIDB in training vendors on contracting and SCM processes which is a challenge in municipalities. Municipalities must do this on their own and often using their own funds” (Participant Eight, 2021).

Participant Nine’s answer to Question 2 was that “No clear roles and responsibilities are defined. Officials do not have the appropriate skills, knowledge and qualifications to carry out Contract Management activities” (Participant Nine, 2021). In Chapter Two the researcher illustrated, under the Principles of Good Contract Governance, that organisations must clearly define the roles and responsibilities of all stakeholders from the initial stages until the contract execution stage and that each role must be represented, and delegations should be in place for those who are task with duties (World Bank, 2018).


Participant Eleven’s answer to Question 2 was that “The municipality does not have the appropriate systems in place to do proper Contract Management. Inadequate planning, and the lack of accountability, record-keeping was also mentioned as a challenge together with the lack of proper record keeping. The municipality also does not have a Contract Management standard operating procedure (SOP) and it is seen as one of the major challenges within the municipality” (Participant Eleven, 2021).

Most of the responses to the challenges for municipal officials in adhering to the legislative prescripts that govern Contract Management included the lack of accountability by officials, that the regulatory environment seems complex, and that misalignment is evident. Most respondents were also of the view that clear roles and responsibilities exist together with a clear lack of leadership.

Question 3. Do you think that the municipality implements corrective measures effectively when the Auditor-General has identified areas of non-compliance?

Table 5.2: Section A, Q3: Do you think that the municipality implements corrective measures effectively when the Auditor-General has identified areas of non-compliance?

Answer	Count	Percentage
Yes	8	67%
No	4	33%
	12	100%



The figure is a 3D bar chart titled 'Section A, Q3'. It displays two bars: a blue bar for 'Yes' at 67% and a grey bar for 'No' at 33%. The y-axis represents percentages from 0% to 100% in 50% increments.

Source: Own compilation (2021)

According to Table 5.2, most of the participants, 67 per cent, indicated that the municipality implements corrective measures effectively when areas of non-compliance were identified by the Auditor-General. The remaining participants responded that the municipality does not implement corrective measures.

The answer given by Participant Three was that “Consequence management has not been institutionalised to its full effect and that the Auditor- General highlighted repeat findings” (Participant Three, 2021). Participant Four’s response to Question 3 was “Yes and no, except for the ability to put in preventative controls”.

Participant Six’s answer to Question 3 was that “The problem is that we only look at the corrective measures of the particular rule transgressed, but never at the impact on service delivery to the public. It is no use if we do everything legally correct in the SCM and Contract Management, but the services rendered were substandard and late. Our Primary Goal is to render a service to the public, but in rendering this service, it must be legal in all aspects (MFMA (56 of 2003), Services Legislation Standard Prescripts). We correct measures within silos and not overall in the actual engine room of the Municipality” (Participant Six, 2021).

Participant Eleven answered that “A lack of consequence management and accountability still exists although the Auditor- General raised non-compliance during its audits”.

The Auditor-General briefed the standing committee on local government, on the 14th of July 2020, on the outcomes of its recent audits performed on municipalities within the Western Cape. This was illustrated in Chapter Two, and the following challenges are still evident and need to be focussed on by municipalities.

- The conflict between political oversight in relation to interference.
- The lack of accountability.
- Non-Compliance to laws and regulations in terms of ethical codes and to take responsibility for compliance.
- The conflict between the cost of compliance and service delivery.
- The compliance with the legislative guidelines and policies.
- The lack of improvement of internal controls.
- Internal control deficiencies.
- The lack of the implementation of an effective consequence management strategy.
- The challenge by not acquiring competent and qualified and competent persons.

The majority of the participants' responses to Question 3 were that the municipality implements corrective actions although some participants' opinions were that a lack of consequence management still exists, and that the municipality does not focus on the impact on service delivery.

Question 4. Do you think budget holders possess the required qualifications, expertise, and professional ethos to manage contracts efficiently and effectively?

Table 5.3: Section A, Q4: Do you think budget holders possess the required qualifications, expertise, and professional ethos to manage contracts efficiently and effectively?

Answer	Count	Percentage
Yes	4	33%
No	8	67%
	12	100%

Section A , Q4

100% 0%

33% Yes

67% No

Source: Own compilation (2021)

The responses to this question posed by the researcher to the participants are captured below in the same sequence as the answers were given during the interview. Table 5.3 shows that 67 per cent of the participants indicated that budget holders do not have the required qualifications, expertise and professional ethos to manage contracts efficiently and effectively. A Contractor Manager, as defined in Chapter Two, must possess the required skills, expertise, qualifications, and experience to manage a contract effectively as the successful delivery of the contract depends on it (World Bank, 2018).

Participant One's answer to Question 4 was that "Contract Managers perceive Contract Management as an administrative burden and do not accept the responsibility as part of the execution of their duties; hence lack the professional ethos more than the required qualifications and expertise" (Participant One, 2021). Participant Six's response was "Yes all those officials who have successfully completed the Municipal Management Competency Levels (MMCL) training have a good understanding of Project Management but not Contract Management."

The response of Participant Nine was that "The budget holders do not always possess the required qualifications, expertise and professional ethos to manage contract effectively and efficiently."

The response given by Participant Eight was that "Sometimes people are put into roles to manage contracts and projects based on experience of being in the organisation for long and that does not mean that it is based on skills or expertise. People need to adapt to change and improve their learning and knowledge over time to be effective in Contract Management. Professional ethics are always emphasised in the workshop to project managers, especially when managing contractors and suppliers. It would help the budget department if officials are trained on contact management so that they can interpret additional budget tasks, variations requests and unauthorised expenditure better" (Participant Eight, 2021).

SCM officials lack skills and competencies as stated in Chapter Two, and the skills are lower than those skills and competencies of SCM officials within the private sector (Ambe & Badenhorst-Weiss, 2012:110).

The NAO in London issued a Good Practice Framework for Contract Management in 2009, which indicated that the appropriate skills should be allocated where skills are needed or

required to ensure an effective Contract Management system, as stated in Chapter Two (NAO, 2009).

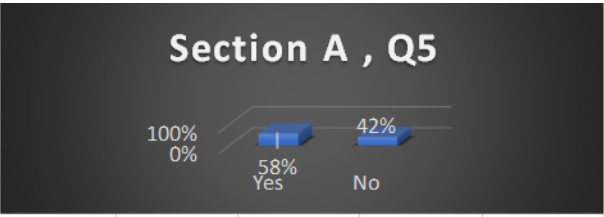
In Chapter Two, it was mentioned that according to the course material on Contract Management by the University of Stellenbosch, the lack of skills and knowledge significantly contribute to the current state of Contract Management (Western Cape Government, 2018).

Most of the participants answered the above question, that budget holders lack the required qualifications, expertise, and professional ethos to manage contracts effectively.

Question 5. Do you think that the over-regulation of the SCM environment contributes to service providers and officials taking shortcuts to deliver a service on time? Do you think your SCM unit is fully capacitated and resourced to manage the Contract Management system effectively?

Table 5.4: Section A, Q5: Do you think that the over-regulation of the SCM environment contributes to service providers and officials taking shortcuts to deliver a service on time.

Answer	Count	Percentage
Yes	7	58%
No	5	42%
	12	100%



Source: Own compilation (2021)

The responses to the above statement posed by the researcher to the participants are captured below in the same sequence as the answers were given during the interview. Table 5.4 shows that 58 per cent of the participants answered that “Yes; the overregulation contributes to shortcuts being taken by officials and service providers. Six of the Twelve respondents indicated that their SCM units are fully capacitated.

The researcher, in Chapter Two, reflected on the opinion of Thai (2001), which argued that when a procurement system is conducive for corruption then a shift should be made to focus and to concentrate on the integrity, honesty and transparency of its internal processes.

In Chapter Two, it was indicated that South Africa needs governance structures like internal audit, external audit, and forensics as well as audit committees that must strengthen oversight and consequence management that are supported by legislation (Mahlaba 2004:87).

South Africa needs to improve internal controls that will detect unethical behaviours according to Pillay (2004:603), as stated in Chapter Two.

The response given by Participant One to Question 5 was that “Yes, shortcuts might be the result of over-regulation however, resistance to reforms in the SCM space is a main contributing factor. In addition, requirements are unreasonable, and adherence are time-consuming which leads to significant delays in service delivery. Furthermore, the AGSA view the application of irregular expenditure as a significant contributing factor to the delays in service delivery. The SCM unit has capacity constraints due to time-consuming consultations with labour and TASK level evaluation processes that are done by committees, consisting mostly of HR staff, that do not have a full understanding of the SCM environment.”

The opinion of one of the Contract Managers was that the Contract Management section is totally under-capacitated to execute the legislative requirements. Another Contract Manager indicated that officials take shortcuts to comply with the legislation.

Participant Six indicated that “Over-regulation does happen in SCM. This overregulation needs many additional staff, which municipalities cannot afford. We tend to cut back on those matters where we do not receive such big dissension as from the AG within Financial Matters. This then reduces operational staff to such an extent that, poor asset management is achieved, i.e., the only breakdown looked at, and preventative maintenance is not done anymore. In order to do all that is required, we will need more staff and equipment. This means that tariffs will have to be increased, which the public can ill afford. We cannot add and control assets at a low standard, but our procurement is at a high standard. The Municipality will fail.”

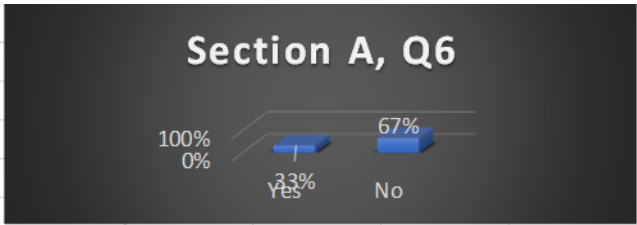
Participant Eleven’s response was that “the intentions of the regulations were good but however, some of the requirements are unreasonable and adherence is time-consuming, and it leads to delays in service delivery. The SCM unit is also not fully capacitated.”

Most of the participants indicated that municipal officials would embark on shortcuts due to the over-regulation of the SCM environment and in particular to Contract Management because officials’ performances get evaluated against the impact that non-compliance has on service delivery and that its SCM units are fully capacitated.

Question 6. Do you think that officials in municipalities understand what the roles and responsibilities are of all officials involved in the Contract Management stages?

Table 5.5: Section A, Q6: Do you think that officials in municipalities understand what the roles and responsibilities are of all officials involved in the Contract Management stages?

Answer	Count	Percentage
Yes	4	33%
No	8	67%
	12	100%
Answer	Percentage	



Source: Own compilation (2021)

Table 5.5 above shows that 67 per cent of the participants indicated that “NO” officials do not understand what their respective roles and responsibilities entail. The life cycle of a contract consists of four phases and the roles and responsibilities of the various stakeholders were depicted in Chapter Two in terms of the roles of the Specifications committee, contract administrator, Contract Manager in relation to the pre-bid award, post-bid award, bid delivery and payment as well as the bid closeout according to the Western Cape Department of Transport and Public Works, SCM Instruction (2011). The CMF of the Provincial Treasury of the Kwazulu-Natal (KZN), as stated in Chapter Two, spells out the roles and responsibilities to ensure an effective Contract Management system.

The response of Participant One was that “Everything is done in isolation and no real integration exist.”

The response of Participant Six was that “The municipality operates in silos and need to operate as a whole.” Participant Five’s response was that “It should be an integrated approach and it should not be the Contract Manager made responsible for Contract Management only.”

Roles and Responsibilities should be assigned to all role-players as stated in Chapter Two according to the NAO in London, which issued a Good Practice Framework for Contract Management in 2009.

5.4 Section A: Part B

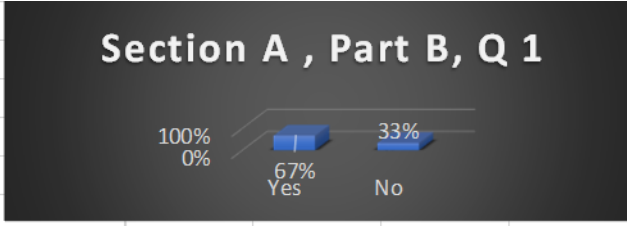
The below questions are part of the Section A questions that were posed to the identified officials within the municipalities. The objective of this specific Part B of the questions was to assess the participant's answers in relation to the underneath statement:

To describe how human behaviour influences the stages of Contract Management and Contract Management outcomes (compliance, legislation, lack of accountability, consequence management, corruption, etc.).

Question 1. What is your opinion in terms of the following statement? Municipal officials do not have the required skills, competence and professional ethos during the Contract Management stages. Do you agree with the above statement?

Table 5.6: Section A, Part B, Q1: What is your opinion in terms of the following statement? Municipal officials do not have the required skills, competence and Professional ethos during the Contract Management stages. Do you agree with the above statement?

Answer	Count	Percentage
Yes	8	67%
No	4	33%
	12	100%
Answer	Percentage	



Source: Own compilation (2021)

The response from most of the participants to the above question was that municipal officials do not have the required skills and competence as per the above Table 5.6 which illustrates that 67 per cent do not have the required skills, competence, and professional ethos.

A Contractor Manager, as defined in Chapter Two, must possess the required skills, expertise, qualifications, and experience to manage a contract effectively as the successful implementation of the contract depends on it (World Bank, 2018).

Participant One's response was that "Contract Managers have a narrow view and treat it as a desktop exercise."

Participant Six's response differs from the majority of participants who have indicated that municipalities do not have the required skills and competence because in his opinion "The Project and Contract Management is done well but how the contract fits in the bigger organisation is very poor."

The answer provided by Participant Eight was that he does not fully agree with the statement because "The legislation is very complex and minor defects or deviations results in irregular expenditure. Most officials are technical people working in their relevant field of expertise and have a basic understanding of Contract Management, and that there is always a risk of corruption in contracts and that the different units like SCM, contracts unit, forensics and internal audit play a vital role in risk mitigation."

In Chapter Two, it was indicated that South Africa needs governance structures like internal audit, external audit, and forensics as well as audit committees that must strengthen oversight and consequence management that are supported by legislation (Mahlaba 2004:87).

South Africa needs to improve internal controls that will detect unethical behaviours according to Pillay (2004:603), as stated in Chapter Two.

The response of Participant Eleven was that "In most instances, staff are appointed but do not have the competence to manage contracts because Contract Management is not their core function within the municipality."

Question 2. How does the municipality deal with non- and poor-performing vendors during the Contract Management stages and with penalties for non-performance?

The answers given by the respondents varied significantly due to the different processes and procedures that have been institutionalised by the respondents. The response of Participant One was that "They do have proper processes in place such as vendor defaults to deal with poor performance and also penalty clauses are inserted into the tender documents and affected in instances of poor performance."

"The penalties are applied, and it is not negotiable." was the response of one of the Contract Managers that were interviewed. Non-performance is escalated to the legal services to analyse each case on its own merits. Contract owners fail to impose penalties as per the guideline of the GCC.

According to the Penalty Act 15 of 1962 (Republic of South Africa, 1962), a penalty stipulation that may arise during the contract is enforceable by law, which was stated in Chapter Two, and that the penalty is used whenever the contractor is in breach and not only for damages but also the consequences thereof.

The response given by Participant Four was that “It’s within the performance scorecards of its directors to keep non-performance less than 3 per cent and that the monitoring gets measured monthly and that they deal with poor performance swiftly.”

The response given by Participant Five was that “Deficiencies in design and tender documentation are often not adequately addressed in applying a sanction to it. Penalties for poor performance during execution are recovered from vendors. Vendors are actively scored in performance, but it seems that we have a problem with the legal aspects of scoring. We tend to be afraid to score accurately for fear of being taken to task.”

Participant Eight’s response was that “They do have a contract monitoring system in place and those line departments must report on poor performance and actions that they have taken against vendors. Penalties or contract terminations apply where contractors or suppliers perform poorly. Supplier restriction or claims for damages suffered and are part of the processes followed.”

The South African law does not require that an offer and acceptance must always be distinguished, as long as an agreement has come about and the other requirements for the creation of a contract are present (Van Huyssteen et al., 2010), as stated in Chapter Two.

As stated in Chapter Two, under the contracts as a source of obligation, Fouche (2015) claims that Roman law refers to an undertaking amongst two parties where obligations must comply with the requirements and that such obligation contains legal consequences in the form of claiming for performance.

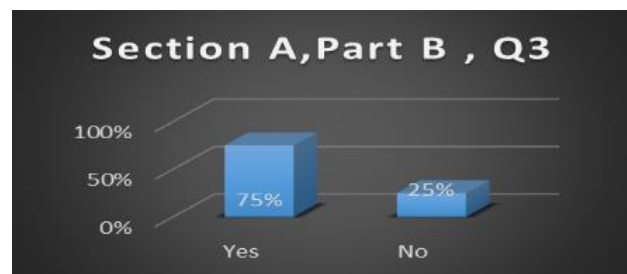
Participant Nine’s response was that “They have also implemented proper processes to address poor performance by vendors on contracts. The municipality will specify in the contract document when penalties will be charged. It is expected of the Contract Manager to first engage with the vendor and subsequently charge the penalty in accordance with the clauses as per the contract.”

Participant Eleven's response was that "The SCM policy was amended to include timeframes that service providers will be suspended in cases of non-performance and varies from six months to thirty-six months."

Question 3. Are specifications drafted in an unbiased manner to allow for an open competitive bidding process that is compliant with the legislative framework?

Table 5.7: Section A, Part B, Q3: Are specifications drafted in an unbiased manner to allow for an open competitive bidding process that is compliant with the legislative framework?

Answer	Count	Percentage
Yes	9	75%
No	3	25%
	12	100%



Source: Own compilation (2021)

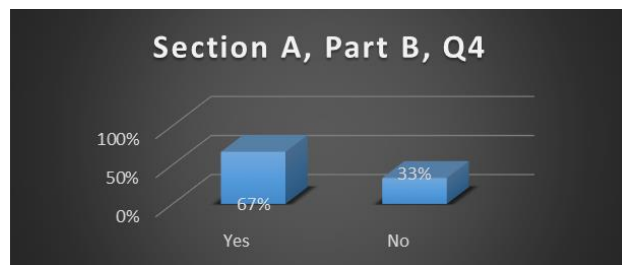
Table 5.7 shows that 75 percent of the participants indicated that specifications are drafted openly and fairly and that the specifications are unbiased. Participant One's answer was that "Controls were enhanced, and the evaluation criteria are interrogated at the bid specifications committee meetings." The response given by Participant Three was that "The bid specifications are accompanied by a questionnaire that encourages accountability and specifications is interrogated at the bid specifications committee." The response given by Participant Six was that "By nature, certain matters have to be specified by using a patent title but preceding with or similar to because the actual specifications are not at hand, and the use of consultants is frowned upon and a patent name is mentioned." Participant Eight's response to Question 3 of Section B was that "An external due diligence service provider has been appointed who does the vetting in an attempt to mitigate risks." National Treasury issued general procurement guidelines that seek to ensure that the public sector gets value for money, open, fair and

effective competition, ethics and fair dealings, accountability and reporting as well as equity – as stated in Chapter Two.

Question 4. Are officials held accountable for any non-compliance pertaining to the acceptance and signing off on invoices for progress payments that do not adhere to the project scope?

Table 5.8: Section A, Part B, Q4: Are officials held accountable for any non-compliance pertaining to the acceptance and signing off invoices for progress payments that do not adhere to the project scope?

Answer	Count	Percentage
Yes	8	67%
No	4	33%
	12	100%



Source: Own compilation (2021)

Table 5.8 shows that 67 per cent of the participants indicated that municipal officials are held accountable for the acceptance and signing off on invoices for progress payments in the event that they do not adhere to the project scope. Participant One's response was that "The onus is on the officials that are authorised to sign off on the invoices." Participant Two's response was that "It would be career suicide." The response of Participant Three was that "Invoices are not checked and that invoices are paid too easily." Participant Four's response was that "A directive was issued in this regard and that it is reported to MPAC immediately when irregular expenditure is detected." The response to Question 4 was that "An accounts payable policy was adopted and that proper authorisation processes have been implemented and that only officials with delegated powers sign off on invoices." According to the course material on Contract Management by the University of Stellenbosch (Western Cape Government, 2018a), a major factor identified would be the occurrence of unethical behaviour together with lack of accountability, fraud and corruption that are continuously experienced within municipalities –

as stated in Chapter Two It seems thus from the responses received by the participants that officials are indeed kept accountable in cases when service providers get remunerated for the delivery of a service that could be regarded as irregular expenditure due to the fact that the completed work was not in accordance with the project scope and specifications.

Question 5. Do you think that a lack of consequence management is evident in municipalities in terms of non-compliance during the Contract Management stages of the contract?

Table 5.9: Do you think that a lack of consequence management is evident in municipalities in terms of non-compliance during the Contract Management stages of the contract?

Answer	Count	Percentage
Yes	7	58%
No	5	42%
	12	100%
Answer	Percentage	

Section A , Part B, Q 5

100% 0%

58% Yes

42% No

Source: Own compilation (2021)

Table 5.9 shows that 58 percent of the participants indicated “Yes” meaning that there is a lack of consequence management within municipalities. The response of Participant One was that “It is only detected afterwards, and it results in irregular expenditure.” The response of Participant Six was that “Consequence management is done for procurement matters and that consequence management, however, of the impact of procurement and Contract Management on the timeous and standard of service delivery is not done, and this should be started and that this should also be charged and assessed at MPAC.”

The response of Participant Eight was that “Strong consequence management is applied for Contract Management failures and that the MPAC and financial misconduct board investigates these matters.” Participant Nine’s response was that “A lack of due diligence checks being done, and no effort is being put into the proper drafting of contracts to address all possible issues that might arise during the execution of the contract.”

The Auditor-General, as stated in Chapter Two, indicated that the challenges that municipalities encounter within the governance context include the lack of the implementation of a practical consequence management strategy together with the lack of accountability.

The following questions were given to four external experts within the field of Contract Management and commence as Section B.

5.5 Section B – External Specialists

The researcher identified four experts which included a Professor who is also the vice dean of a law faculty within the department of Public Law and who teaches procurement law, also a Doctor who are a specialist in construction procurement in South Africa and who issued several articles and journals relating to construction procurement and infrastructure in South Africa. The Third expert is a well-known legal and SCM Specialist across municipalities in South Africa and who assist municipalities with the implementation of SCM Compliance matter. The Fourth expert is a former contract manager with experience in the implementation of effective systems with a proven record and qualifications in project management, construction, and infrastructure procurement.

Question.1 Do you think that municipal officials entrusted with Contract Management possess the required expertise and knowledge to manage contracts effectively?
Please motivate your answer.

Table 5.10: Do you think that municipal officials entrusted with Contract Management possess the required expertise and knowledge to manage contracts effectively? Please motivate your answer.

Answer	Count	Percentage
Yes	0	0%
No	4	100%
	4	100%
Answer	Percentage	

Section ,B, Q1

100% 0% 100%

Yes No

Source: Own Compilation (2021)

Table 5.10 shows that 100 per cent of the respondents agreed “Municipal officials entrusted with Contract Management does not possess the required expertise and knowledge to manage contracts effectively.” Participant One further responded that “It was a matter of inappropriate officials who were just assigned to the Contract Management function.” Participant Two also responded that “Contract Management officials do not have the qualifications and it included CFO and that government must perform a capacity audit.” Participant Three’s response was that “We lack a comprehensive capacity framework, and that Contract Management is one of the most neglected SCM elements, and that no clear roles and responsibilities exist as well as a lack of communication between SCM and the project owner. Contract managers also lack legal training; roles are not defined clearly, and National Treasury must provide guidance.”

These results correspond to the researcher’s assertion in Chapter One (See page 10-12) that municipalities lack qualified engineers and Contract Managers that must ensure the implementation of an effective Contract Management system. The skills of SCM officials within the public sector are significantly lower than those of officials in the private sector (National Treasury, 2015:52). SCM officials lack the required competencies, and it contributes to unethical behaviour and non-compliance (Ambe & Badenhorst – Weiss, 2012:110).

Question 2. Do you think the constitutional provisions of Sections 217, 152, and 195 get compromised as a result of negative and or corrupt practices within the Contract Management domain in municipalities in the Western Cape? Please motivate your answer.

Table 5.11: Do you think the constitutional provisions of Sections 217, 152, and 195 get compromised as a result of negative and or corrupt practices within the Contract Management domain in municipalities in the Western Cape? Please motivate your answer.

Answer	Count	Percentage
Yes	4	100%
No	0	0%
	4	100%
Answer	Percentage	

Section B, Q 2

100% 0% 100% 0%

Yes No

Source: Own Compilation (2021)

Table 5. 11 show that 100 percent of the participants were unanimous in their responses. These professionals are recognised scholars and experts within the field of Contract Management and all of them motivated without any doubt that “The constitutional provisions of Sections 195, 217 and 152 are being compromised.” With continuous corruption, communities suffer, and officials enrich themselves and because of that, the procurement process as envisaged in Section 217 of the Constitution (1996), gets compromised were one of the motivations of one of the experts. It was motivated by one of the experts that it is more negative practices – than corrupt practices – due to the lack of skills and experience and expertise and the fact that officials do not understand the professional ethos mentioned in Section 195 of the Constitution (1996).

The researcher, in Chapter One, hypothesised that Sections 195, 217 and 152 get compromised and that the purpose of the study would be to explore the extent to which the mentioned constitutional provisions get compromised. This is also a focus area of the research study, and the researcher questioned in Chapter One whether Contract Management gives effect to Section 217 and whether it is implemented according to Section 195 and also whether it meets the objectives of Section 152 of the Constitution (1996). National Treasury issued general procurement guidelines with the intention to implement the five pillars, which include value for money, open and transparent competition, ethics and fair dealings, accountability and equity. These pillars, when implemented effectively, compliments the three constitutional provisions mentioned earlier in this paragraph.

Question 3. Do you think that municipalities should rather outsource large infrastructure projects to the private sector and implement stricter controls for contract monitoring and performance of vendors? Please motivate your answers.

The answers, given as motivation for the above-mentioned question, vary from one expert to the other. The response from Participant One was that “The private sector has very little to no appreciation for the framework within the public sector and how the public sector operates.” Participant Two responded that “To monitor the implementation agent requires its own Contract Management principles and if you lack Contract Management, the large infrastructure projects will lack contract monitoring.” Participant Three’s response was that “Contract Management problems arise when private companies try to implement projects in the public sector and where they are not contract managers. Turnkey projects also need to be managed in

terms of the design, build and operating type solutions as the risk that the infrastructure is run to destruction during the contract period and comes with a significant burden upon transfer.”

The response of Participant Four was that “It would not always be possible to outsource large projects to the private sector but maybe in some instances. The public sector needs to build capacity and resources and we should not always depend on the private sector. The state is the main provider for all and that we should utilise Public-Private Partnerships (PPP’s) because it will ensure better Contract Management. Transfer of skills and capacity to the state is imperative and we need to ensure that the private sector performs on behalf of the state to ensure a joint effort between state and private sector. The private sector must train its own people.”

Participant Three further responded that “The reality would be to enter into a turnkey arrangement where the master contractor runs the whole contract, for example, large housing developments. The municipality needs to manage the contract effectively. Municipalities cannot give the contract over to the supplier to manage.” Participant Three continued further with the response that “Outsourcing would not be the answer and that we need to capacitate and focus in-house. You need general and strong SCM skills and project management capacity in order to be able to run projects on time.” The response from Participant Two was that “We do not need stricter controls but rather to do Contract Management where we are lacking. We need a consulting engineer only to manage the contract. The answer to all of the above depends on the kind of scenario from a capacity point of view because Category B municipalities would not need such big projects.”

The response of Participant One was that “We should not outsource large infrastructure projects and that the current practice is that consulting engineers manage large infrastructure projects; hence the opinion that consulting engineers need to be managed effectively with stricter controls and penalties should be served on cost overruns.”

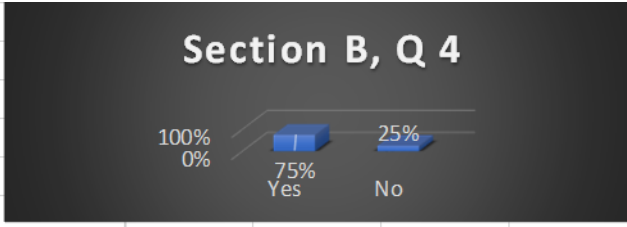
Public procurement seeks to contribute to the community by means of value for money, for goods and services rendered, and to save public funds in general. Communities will experience poverty if services are not rendered on time and the way they should be, hence service delivery will get compromised (Wiehen & Olaya, 2006: 29), as mentioned in Chapter Two.

Quinot (2009:243) argues that the public interest and efficiency are not opposites but instead it is in the best interest that government officials be efficient in carrying out its functions, as mentioned in Chapter Two.

Question 4. Should Accounting Officers be held personally liable for non-completion, poor, and/or negative practices with respect to capital spend and labour relations within the Contract Management domain? What is your opinion?

Table 5.12: Should Accounting Officers be held personally liable for non-completion, poor, and/or negative practices with respect to capital spend and labour relations within the Contract Management domain? What is your opinion?

Answer	Count	Percentage
Yes	3	75%
No	1	25%
	4	100%
Answer	Percentage	



Source: Own Compilation

Table 5.12 shows that 75percent of the participants indicated “Yes” to this question, and those systems should be adequately monitored. It would be impossible for the Accounting Officer to be involved in the daily operations of projects and that is why we have a system of delegation in place. Participant One’s response was that “Accounting Officers should keep its management structure more accountable, and that is why Section 56 managers must have a clear sight and understanding of all projects.”

Participant Three’s response was that “Accounting Officers should be held liable if malice or bad faith was evident, and the intention was to be corrupt. If it was a genuine mistake, then it is not the best option to keep Accounting Officers liable because all are humans and all make, at times, mistakes.”

Participant Four’s response was that “Accounting Officers should be held liable absolutely without any doubt. If there is a causal link between Accountability and non-performance, then there is surely a need to keep them liable and accountable. If the actions were unethical from someone else, then we cannot keep the Accounting Officer liable. If the Accounting Officer knew that there is a big capital project and do not perform on the contract, then he should be

held liable. We need to develop Accounting Officers that can say no, and they must be stronger, and it should be the principle. Only those Accounting Officers who are willing to say no must become Accounting Officers because if you are going to say yes, then you must be kept liable. The hands of Accounting Officers need to be strengthened. The appointment process of Accounting Officers and competencies are important, and Accounting Officers must be the most knowledgeable person in the room. Accounting officers must guide mayors and Mayoral Committee (Mayco) and over time, politicians will realise that it is not their place, and they need to listen to Accounting Officers.”

The response of Participant Two was that “Budget holders should be held liable and that each one’s KPI for performance must be applied as a control mechanism.”

Question 5. Should municipalities adopt private sector strategies and standards towards Contract Management? What is your opinion?

The answers, given as motivation for the above-mentioned question, vary from one expert to the other.

The response of Participant One to this question was that “If municipalities cannot do Contract Management then they will not be able and cannot do Contract Management. By using the private sector, strategies will get worse, and shortcuts and corruption will be more prevalent. The state has a different obligation, that is to ensure service delivery, and hence it is a no; absolutely no to make use of private sector strategies. The primary function of the private sector is to make money and that of government is not to make money but rather to deliver a service. We cannot have the very same strategy if the outcome is not the same. The implementation of Contract Management is the problem and that should be addressed.”

The response from Participant Three was that “To a limited extent we can adopt private sector strategies, but we need to be mindful of the private and public sector objectives. The private sector seeks profit, and the public sector seeks service delivery. We can, however, learn from the private sector with many examples; for instance, the E-system and how to utilise it effectively. We do have instances where we can make use of the private sector, but it should rather go via the filtering system in terms of what can be used.”

The response of Participant Two to this question was that “Contract Management is a common law mechanism, and that government is not in a superior position in this regard and that legislation must confirm this principle as AGSA findings result in various unintended consequences.”

Question 6. Do you think municipalities lack meaningful public participation during the identification of capital projects? Please provide an explanation.

Table 5.13: Do you think municipalities lack meaningful public participation during the identification of capital projects? Please provide an explanation.

Answer	Count	Percentage
Yes	3	75%
No	1	25%
	4	100%
Answer	Percentage	

Section B, Q 6

100% 0% 75% 25%

Yes No

Source: Own Compilation (2021)

Table 5.13 shows that 75 percent of the participants answered “Yes”, and that the current IDP processes do not work. It is regarded as lip service and that the planning at the project level is non-existent. It can thus be argued that political direction, and what is required at the grassroots level differ. Communities demand what is not currently the most appropriate strategy for the municipality.

Another opinion was that “Yes”, municipalities do lack meaningful public participation for the identification of projects. We need more participation because wards are involved and communities list projects. We need more participation because municipalities are there, and communities and the public do not understand how local government operates. The demands from residents in poorer communities would be for basic services like water, sanitation and electricity, and they are seldom not interested in the compilation or reconciliation of the municipal budget.

Municipalities budgets differ from one another because there is a public input via the ward committees; whether it is regarded as direct or indirect, the ward committee informs the operations of the ward councillor. Councillors would have an impact on the budget and a

professional expert indicated that he would be surprised if it happens on a participatory level. People go to a ward meeting and items are placed in a basket, but it is not budgeted for. The needs differ from ward to ward.

Question 7. Do you think National Treasury should consider issuing one Contract Management framework and guidance document that must clearly spell out roles and responsibilities, Contract Management, who are accountable –and for what –and performance evaluation assessments during each stage of the contract? What is your opinion?

The answers, given as motivation for the above-mentioned question, vary from one expert to the other.

The response from Participant One was that “The National Treasury has been trying it for years; hence, there is very little wrong with what is in the public domain. This mythical Contract Management thing has been blown out of proportion. If you can do that, you can manage any contract. We have a technical deficiency in the public sector, which further worsens the Contract management performance. Where Contract Management loses sight of what is important is where we start requiring all sorts of administration aligned to the Contract Management system and the Contract Managers spend the most of their time doing reports and matrixes, etc. and not at the coal face making sure delivery happens on time. National Treasury and municipalities need to move away from the theory and get the basics right as many failed projects have perfect paperwork, but the project failed.”

Participant Two’s response was that “It would be helpful, and a standard guide would be useful. Autonomy is good in terms of roles and responsibilities.”

Participant Three’s response was that “In principle, yes, we should have a single instrument that is clear and comprehensive. The framework should be in an understandable format. The IDMS (Infrastructure Delivery Management System) was not written in a way to assist municipalities due to the lack of implementation of it.”

Participant Four’s response was that “If you have a national framework then people with current capacity must be able to work on it. An inspirational document yes; it is just a framework. We need a hand on the lower-level framework that speaks to lower levels. If you face a contract, what are the basic checks, templates, checklists; just a clear workflow document

will be very helpful. Who is responsible for what? I am astounded by how often senior managers do not understand the roles, and who does what. Just simple workflows will assist the assumption that the project manager is geared and understand the workflow processes. Can you explain how minutes of BAC decisions are institutionalised? If nothing happens, the Accounting Officer must answer. We need a centralised Contract Management register that will red-flag spending. The current guidelines and frameworks are inconsistent.”

Question 8. Do you think that a lack of consequence management, corrective, and lack of punitive measures within the Contract Management environment contributes to the current state of Contract Management in municipalities? Please provide an explanation.

Table 5.14: Do you think that a lack of consequence management, corrective, and lack of punitive measures within the Contract Management environment contributes to the current state of Contract Management in municipalities? Please provide an explanation.

Answer	Count	Percentage
Yes	3	75%
No	1	25%
	4	100%
Answer	Percentage	

Section B, Q 8

100% 0% 75% Yes 25% No

Source: Own Compilation (2021)

Table 5.14 shows that 75 percent of the participants answered that “Municipalities lack consequence management.” Participant One’s response was that “Some officials think that they are untouchable as well as a lack of political will perceive, and it is evident that municipalities are just not willing to implement consequence management.”

Participant Three’s response was that “Yes, at least consequence management. To an extent, yes, whether punitive measures. I do not know; it is a big debate. My sense is that we do not learn from our mistakes. To sit, check who was responsible, and manage the consequence of what went wrong. Punishing people all the time; I am not sure whether that is the answer. People should have a comfort level and trust; they can say that it went wrong. If I say it then I will be responsible. People must be free to say that I made a mistake.”

Participant Three's response was that "Yes, definitely, consequence management and the Auditor-General supports this argument. The systems and frameworks already exist to deal with non-performance, but if not implemented nothing will change."

The researcher, in Chapter One as part of the purpose and aim of this study, indicated that municipalities lack consequence management as well as accountability. The Auditor-General, during its deliberations with the standing committee on Local Government on the 14th July 2020, indicated that some of the challenges that municipalities encounter within the governance context include amongst others the lack of accountability as well as the lack of implementation of an effective consequence management strategy.

The researcher gathered information from four external stakeholders who actively participate during the annual Integrated Development Plan (IDP) meetings and who are familiar with the systems and processes of the Municipal Administration. These organisations normally apply for grants in Aid for them to sustain their local businesses and will commence under Section C underneath.

Section C – Four External stakeholders

- a. To understand the constitutional and legislative framework for Contract Management and how this should impact human behaviour (i.e., SCM norms and standards).

Question 1. Are you aware of any instances where municipal officials were guilty of negative behaviour but were not disciplined or held accountable? Any comments?

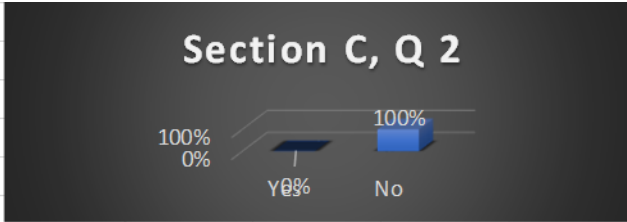
The response given by the participants pertaining to this question were both "Yes" and "No". One of the participants indicated that their organisation is only aware of environmental matters. Another external stakeholder answered that the systems of the municipality are extremely slow, laborious and that issues tend to pile up and because of that, it is easier to just move forward and sweep things under the carpet. The fourth respondent indicated that their organisation does not feel comfortable commenting because they do not have first-hand knowledge, but their opinion suggest that officials and managers are not in touch with the realities at the grassroots level. Collaboration does not happen to the extent that it should be, and councillors work on their own. However, working with institutions across the board may have better results. It was

also the experience of this specific stakeholder that officials favour certain areas, and more resources get distributed to that area.

Question 2. Are you aware of any project where inferior materials were utilised, but the service provider was paid by the municipality? Any comments?

Table 5.15: Are you aware of any project where inferior materials were utilised, but the service provider was paid by the municipality? Any comments?

Answer	Count	Percentage
Yes	0	0%
No	4	100%
	4	100%
Answer	Percentage	



The chart displays two bars: a blue bar for 'Yes' at 0% and a green bar for 'No' at 100%.

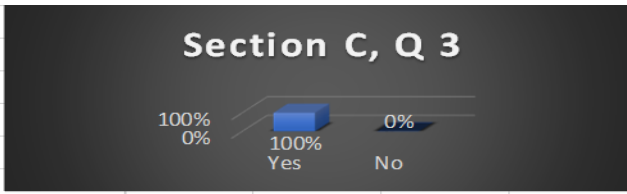
Source: Own Compilation (2021)

Table 5.15 shows that 100 percent of the participants answered “No” to this question; they were not aware whether inferior materials were used. One of the stakeholders’ comments were that “Inferior project management in their opinion is taking place because one was aware of instances where a contractor was allowed to leave tree trunks in the waterway after invasive species have been cut down; it obstructed the waterway because of insufficient monitoring of littering of waterways by the municipality.”

Question 3. Should the municipality refer cases of corruption and malpractices to an external independent investigator to prepare cases for the courts directly? Any comments?

Table 5.16: Should the municipality refer cases of corruption and malpractices to an external independent investigator to prepare cases for the courts directly? Any comments?

Answer	Count	Percentage
Yes	4	100%
No	0	0%
	4	100%
Answer	Percentage	



The chart displays two bars: a blue bar for 'Yes' at 100% and a green bar for 'No' at 0%.

Source: Own Compilation (2021)

Table 5.16 shows that 100 percent of the participants answered “Yes” to this specific question, and all commented further to substantiate their answers. One of the participants suggested that an independent person must be appointed who is more objective in terms of findings and recommendations. Participant Two complimented the suggestion of an independent investigation, and that it would be preferable because corruption in South Africa is an abscess, and the bias factor must be removed. Municipal officials will protect their own processes and they can be manipulated, and their actions stays hidden unless there are whistle-blowers or pressure from civil society. Participant Three’s response was that “The biggest threat, in terms of proper investigation in cases of corruption, is not to refer it to an independent investigator because their opinion suggests that it is a common fact that contamination of information in these instances most of the time happens by inside staff. If we are serious about addressing corruption, then it (external independent investigators) is the best way to deal with it.”

Question 4. Does the over-regulation of the municipal environment impact directly on the achievement and enhancement of service delivery in communities? Any comments?

The response from the external stakeholders on this question differed. One respondent indicated that they do not understand the question. Another stakeholder answered that it is the medicine for achievement and that it affects efficiencies. The third respondent indicated that they are not sure and that there are loads of red tape that would have a negative impact on service delivery. A positive and can-do attitude works within the system, and when you understand what is required then your approach to a project will be in a way to work within the framework. The fourth respondent’s answer was that there is absolutely over-regulation; that it affects service delivery, and that the impact on the environment is plausible. The respondent justified this answer by referring to the complete disconnect between the regulations and the execution of such regulations by ordinary citizens. There is no monitoring of littering caused by citizens in the waterways. Rubble is deliberately being thrown into the waterways and it seems that no action has been taken. The reason might be insufficient or ineffective ways provided by the municipality for the disposal of waste by ordinary community members; that community laws should be applied, and that culprits should be prosecuted where transgressions appear. The external stakeholder also suggested that it would be more cost-effective to focus

on reducing waste and landfill exercise by engaging with the institution addressing poverty and unemployment.

The following questions were also given to four external stakeholders.

Part B of Section C.

b. To describe how human behaviour influences the stages of Contract Management and Contract Management outcomes. (compliance, legislation, lack of accountability, consequence management, corruption, etc.). The responses of the four external stakeholders are captured underneath and start with Question 1 under Section B.

Question 1. Do you think that the municipality has an open and fair procurement system? Any comments?

The responses given by the participants varied in a way. Participant One's response was that "In terms of the grant in aid allocation, they are getting an equal opportunity in terms of their share." Participant Two's response was that "There is far too much protecting one's backside to operate openly and fairly." The third respondent indicated that "Not everyone is treated the same and hence their response was yes and no to this question". The fourth participant indicated that "They are not fully qualified to answer this question because it is extremely difficult to be acknowledged when applying for contracts and that organisations have been turned away solely because they are seen as welfare organisation." and hence they were not sure how to answer this question.

Question 2. Are you aware of any service providers that were appointed in an unethical manner, but were never prosecuted? Any comments?

The responses given by the participants varied from one participant to the other.

The response was "No" to this pertinent question, but Participant One's response was that "Such instances do occur and that officials are getting away for years with unethical behaviours and are not caught to save the damages and to be preventative." Participant Two just wrote "No

comment.” The fourth participant’s response was that “They have witnessed sloppy work that has been carried out and the unproductiveness of the CWP and EPWP is mainly due to ineffective supervision.”

Question 3. Do you think that the community should be involved during the Contract Management stages of the project in terms of monitoring the deliverables and outputs of the contract? Any comments?

Table 5.17: Do you think that the community should be involved during the Contract Management stages of the project in terms of monitoring the deliverables and outputs of the contract? Any comments?

Answer	Count	Percentage
Yes	4	100%
No	0	0%
	4	100%
Answer	Percentage	

Section C,Part B, Q 3

100% 0% 100% 0%
Yes No

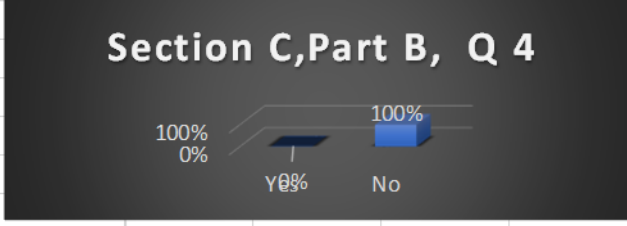
Source: Own Compilation (2021)

Table 5.17 shows that 100 percent of the participants answered “Yes.”, but one participant also commended by answering that “It depends on who the organisation is that the municipality is entering into a contract with.” Another response was that “An independent panel should be appointed to prevent corrupt appointments and that the public participation partnership concept would be strengthened when open and fair.” The third response was that “Only if the community do understand every aspect of the process perfectly, then accountability and service delivery would be much better when the community is involved, but it needs to be managed with great care because it could derail the process if deliverables and objectives are not clearly defined and agreed on. Non-performance should be addressed, and then it will bring over the message that the municipality is serious.”

Question 4. Is the municipality performing its functions in a professional manner at all times? Any comments?

Table 5.18: Is the municipality performing its functions in a professional manner at all times? Any comments?

Answer	Count	Percentage
Yes	0	0%
No	4	100%
	4	100%
Answer	Percentage	



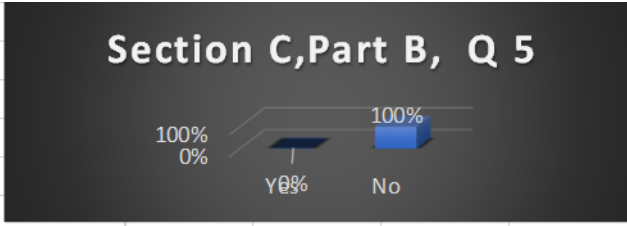
Source: Own Compilation (2021)

Table 5.18 shows that 100 percent of the participants answered “No.” and everyone provided a comment to this very important question in terms of the research study. One respondent answered that “Appointments, dismissals and disciplinary actions have been, in certain circumstances, done in an unprofessional manner.” Another response was that “Sometimes emails are not answered or acknowledged and that officials do not adhere to deadlines. The municipality does not respond, and it seems to be one of the biggest problems that the external stakeholders are faced with daily.”

Question 5. Do you think the municipality maintains a high level of ethics within the Contract Management field? Any comments?

Table 5.19: Do you think the municipality maintains a high level of ethics within the Contract Management field? Any comments?

Answer	Count	Percentage
Yes	0	0%
No	4	100%
	4	100%
Answer	Percentage	



Source: Own Compilation (2021)

Table 5.19 shows that 100 percent of the participants answered “No, the municipality does not maintain a high level of ethics.” One respondent answered that “The municipality might have

ethics built into all activities; however, it is the ethics of certain individuals whose unethical actions bring the municipality into disrepute.”

Question 6. Do you think that Accounting Officers must be held personally liable for all non-performance of vendors if no consequence management was implemented? Any comments?

The responses varied to this specific question by the participants. One response was that “Officials should be held accountable.” Another response was that “Procurement managers must take responsibility for poor vendor performance.” Participant Three’s response was “Yes, the Accounting Officer should be held accountable.” was the response from the third respondent. “It remains taxpayer’s money and consequence management should be applied where non-compliance and negligence can be proved.”

5.6 Summary

The data analysis in this chapter was to determine whether the three different categories of respondents understand the constitutional and legislative framework for Contract Management; how human behaviour influences the stages of Contract Management and Contract Management outcomes in relation to compliance, legislation, lack of accountability, consequence management and corruption. The qualitative research results from the different stakeholders are summarised below. The responses of 67 per cent of the internal senior officials within municipalities confirmed that over-regulation is a contributing factor to shortcuts in order to comply with the cost-of-service delivery. The responses from 100 per cent of the external experts also confirmed in their responses that municipal officials do not understand the legislative and constitutional environment that governs Contract Management. The responses from the internal senior officials on the legislative framework were significant because 66,7 per cent of the responses substantiated that officials do not understand the legislative framework that governs Contract Management within municipalities. The internal officials also responded that the legislative environment is a challenge, due to the different interpretations of the pieces of legislation that need to be complied with for Contract Management. The responses from both the internal senior officials involved with Contract Management and the external experts confirm what the researcher has hypothesised in Chapter

One, namely that “The SCM operates daily in a legislative and over-regulated environment and that municipal officials involved in Contract Management do not understand it.”

The majority of the internal senior officials (67 per cent) indicated that budget holders do not have the required qualifications, expertise and professional ethos to manage contracts effectively. The responses, of 100 per cent of the external experts, to whether municipal officials possess the required knowledge and expertise to manage contracts effectively were “No”, indicating that they do not possess the expertise and knowledge. The response of 100 per cent of the external community organisations was that municipal officials do not have a high level of ethics and that the municipalities do not function professionally. The researcher hypothesised, in Chapter One, that “The negative human behaviours are mostly due to the lack of skills.” and the researcher has suggested, in Chapter One also, that “Municipalities are in dire need of experts in the field of Contract Management.” The responses of the external community organisations confirmed the aim of the study to explore the extent to which Sections 152, 217 and 195 of the Constitution (1996), gets compromised, and 100 per cent of those participants confirmed by answering that municipal officials lack professionalism and a high level of ethics. The external experts indicated that municipalities lack meaningful public participation and involving the communities during the IDP processes will ultimately change the perception of the community in terms of professionalism and levels of ethics – if involved during the Contract Management stages.

The results of the qualitative research indicated that 67 per cent of the internal senior officials do not understand what the roles and responsibilities of the officials involved in Contract Management are. The responses of the internal senior officials also indicated that it is also one of the challenges that they encounter because no clear roles and responsibilities are assigned to officials involved in Contract Management. The response of 100 per cent of the external experts was that National Treasury should embark on a process of adopting one single legislative framework for Contract Management.

The responses from both the internal senior officials involved with Contract Management and the external experts confirm what the researcher has hypothesised, in Chapter One, namely that “No clear roles and responsibilities are determined in Contract Management.”

The data results of the internal senior officials indicated that 67 per cent responded, the municipality lacks accountability and consequence management. The results, 75 per cent of the external experts indicated that the lack of accountability and consequence management is

evident within municipalities and 75 per cent further indicated that Accounting Officers should be held personally liable for non-compliance. The additional comment of one of the external experts was “Accounting Officers should be held liable absolutely without any doubt. If there is a causal link between accountability and non-performance, then there is surely a need to keep them liable and accountable. If the actions were unethical from someone else, then we cannot keep the Accounting Officer liable. If the Accounting Officer knew that there is a big capital project and do not perform on the contract, then he should be held liable. We need to develop Accounting Officers that can say no and they must be stronger, and it should be the principle. Only those Accounting Officers who are willing to say no must become Accounting Officers because if you are going to say yes, then you must be kept liable. The hands of Accounting Officers need to be strengthened. The appointment process of Accounting Officers and competencies are important, and Accounting Officer must be the most knowledgeable person in the room. Accounting officers must guide mayors and Mayco and over time, politicians will realise that it is not their place, and they need to listen to Accounting Officers.” The responses from the majority of the internal senior officials ,67 per cent, and another 100 per cent of the external experts involved with Contract Management) confirm what the researcher has hypothesised in Chapter One, namely that, “The lack of ownership and responsibility contributes to ineffective Contract Management.” and also that “The research will prove that whenever and wherever leadership is absent in the creation of an ethical environment within an organisation, that negative human behaviour will be prevalent.”

Municipalities lack the required skills, experience, knowledge and professional ethos, and this was confirmed by both the panel of experts as well as the senior officials within the municipalities. The over-regulation of the SCM industry also contributes to the shortcuts, and this was confirmed by the internal senior officials, as seven of the twelve participants agreed that service delivery gets compromised at the cost of compliance. The internal staff alluded to the disjuncture between the various pieces of legislation, and the panel of experts agreed that National Treasury should seriously consider the issuing of one framework. It was also very clear from all the respondents that municipalities lack clear roles and responsibilities; it was also stated, by the researcher, in Chapter Two as part of the literature review, and it was confirmed that no clear roles and responsibilities exist. The responses from the external organisations that are directly aligned to the municipality’s IDP recommended that an independent investigator should be appointed to investigate cases of corruption, should they be identified because it negatively affects Contract Management within the municipality. The

external organisations also indicated with their respective responses that the municipality lacks professionalism and ethics whenever they are dealing with the public. The researcher will, in the next chapter, conclude on the findings and make certain recommendations.

CHAPTER 6: CONCLUSIONS OF THE FINDINGS AND RECOMMENDATIONS

6.1 Introduction

The researcher indicated, with the research and methodology in Chapter Four, that a number of municipalities will be identified as a sample to receive and complete the questionnaires and that various stakeholders from within these municipalities will be requested to participate. This form of sampling is referred to as purposive sampling. The researcher also identified the municipality – where he is currently employed, which is Stellenbosch Municipality – as part of the sample. Chapter Five, above, presented the qualitative and quantitative data obtained from these engagements. The researcher also reviewed the current systems and processes at Stellenbosch Municipality as a case study.

The research objectives will be revisited in this chapter and recommendations are presented in response to the findings, which were gathered from Chapter Five. The purpose of this research study is to determine the effect of negative human behaviour on municipalities within the Western Cape. The research that was conducted included interviewing senior officials within the municipal environment that are involved within the Contract Management domain, external experts that have significant expertise and knowledge of Contract Management and external stakeholders that participate during the municipality's IDP.

6.2 Summary of the Study Objectives and Research Findings

6.2.1 Objectives of the Study

The researcher intends to substantiate the research question: What effect does negative human behaviour have on Contract Management in municipalities in the Western Cape?

The research question is supported with the following objectives for the study:

Objective 1. To understand the constitutional and legislative framework for Contract Management and how this should affect human behaviour (i.e., SCM norms and standards).

The data results have illustrated that 67 per cent of the internal senior officials, and that 100 per cent of the external experts support the view that municipal officials involved in Contract Management do not understand the legislative and constitutional framework for Contract Management, and the effect on human behaviour i.e., the cost of compliance.

Objective 2. To describe how human behaviour influences the stages of Contract Management and Contract Management outcomes. (Compliance, legislation, lack of accountability, consequence management, corruption, etc.)

The responses of 67 per cent of the internal senior officials and 100 per cent of the external experts support the view that the municipality lack qualified engineers, skills, knowledge and experience. It also was clear from the responses that, due to over-regulation, 67 per cent of the internal senior officials tend to take shortcuts, and this practice then compromises the integrity of the Contract Management system. The panel of experts (100 per cent) suggested the implementation of one CMF will solve the problem of over-regulation and contradictory pieces of legislation.

Objective 3. Analyse how negative human behaviour affects each of the stages of Contract Management. (Empirical).

The qualitative data suggest that 67 per cent of the senior internal officials indicated that officials would rather prefer to take shortcuts because of the significant number of pieces of legislation within which the municipality need to perform. The lack of qualified officials who can manage contracts, and the lack of expertise and skills within the Contract Management domain contribute to the negative behaviours that have a direct impact on the Contract Management stages within municipalities. The researcher could not detect from either the internal senior officials or the panel of experts' responses that corruption by means of kickbacks, bribery, etc are evident and whether it affects the stages within the Contract Management system. The negative human behaviour, as mentioned in this study, is a result of the lack of skills, knowledge and qualified officials.

The following recommendations are based on the current challenges that municipalities encounter with the implementation of an effective Contract Management system in relation to the responses received and captured from the data analysis. The below recommendations suggest, when implemented successfully, it will improve the current Contract Management systems within municipalities.

6.3 Study Recommendations

Recommendation 1: Appoint staff with the necessary competencies and experience to implement an effective Contract Management system within municipalities.

Current Situation within the Municipality: The sampled municipalities lack expertise and experience, and there is not sufficient qualified staff based on the data that 67 per cent experience and that 100 per cent lacks expertise according to the external experts.

Data responses: The responses from the internal senior experts, and the panel of experts, indicated that municipalities do not have the required skills, knowledge and experience in terms of the effective implementation of Contract Management.

Recommendation 2. Define clear roles and responsibilities within the Contract Management stages.

Current Situation within the Municipality: No clear roles and responsibilities exist within the municipality, and because of that no one is taking full responsibility for Contract Management.

Data responses: The responses of 67 per cent of the participants suggest that officials do not take responsibility for Contract Management because they do not know who is responsible and there are too many role players.

Recommendation: That clear roles and responsibilities should be assigned to all senior officials involved in Contract Management. The roles and responsibilities should also clearly stipulate who will be responsible for what.

Recommendation 3. Leadership, Accountability and responsibility, consequence management and corrective measures.

Current Situation within the Municipality: The monitoring and administration of contracts are vested in the SCM unit and blame is shifted whenever non-compliance and/or irregular expenditure is identified.

Data responses: The responses from 67 per cent of the internal senior officials indicate that a lack of consequence management and accountability is evident within the municipality and 100 per cent of the external experts indicated that Accounting Officers should be held accountable for any non-compliance and that senior managers must take responsibility for managing the performances on contracts.

Recommendation: That the performance and non-performance of service providers, in terms of Contract Management, must be included within the top layer KPI's of directors and senior managers. That the performance of directors and senior managers must be calculated against the number of non-performances of service providers.

Recommendation 4. The adoption of one single legislative framework for Contract Management.

Current Situation within the Municipality: The various legislation contradicts one another; the municipality is facing enormous challenges in terms of compliance and the Auditor-General identifies non-compliance during its audits every year.

Data responses: The responses of 67 per cent of the internal senior officials and 100 per cent of the external experts indicate that officials take shortcuts because the legislation contradicts one another and that the cost of compliance is challenging in relation to the rendering of services to communities.

Recommendation: That National Treasury must issue one framework that municipalities must use during the advertising, evaluation, adjudication and execution of Contracts and that the Auditor-General then audits municipalities only against that one single framework.

Recommendation 5. Community Participation, monitoring and reporting of Contracts.

Current Situation within the Municipality: Communities have minimal involvement during the IDP processes of the municipality in terms of the identified projects. It is more seen as a tick box exercise, and due to the non-involvement of communities as active participants, it resulted in service delivery protests.

Data responses: The responses of 100 per cent of the community organisations indicated that officials do not have the professional ethos and they do not completely trust officials and that officials lack ethics.

Recommendation: That the communities be involved and regulated during the Contract Management stages in terms of keeping the municipality accountable in relation to the performance of the service provider to ensure that the municipality and community get value for money out of the project. This can be achieved with the implementation of a quarterly stakeholder assessment on the project and the performance of the service provider together with the inclusion of the respective ward committees and other community organisations.

6.4 Conclusions of the Study

The results of this study confirm that municipalities lack professional and qualified senior personnel that are able to manage contracts effectively and efficiently. The researcher, in Chapter One as part of the introduction and Chapter Two during the Literature review and also in Chapter Four as part of the research and methodology, highlighted that the challenges that municipalities encounter relate to the appointment and management of an effective Contract Management system in terms of skills, knowledge, experience and expertise. The panel of experts suggested the importance of one single CMF, and the internal senior officials tasked with Contract Management reported the miss alignment and over-regulation of local government towards the rendering of services to communities. The results of the study analysis also indicate that the lack of consequence management, accountability and ownership with respect to Contract Management is evident and that stricter controls and performance measurements need to be put in place. The municipality should adopt a retainment policy to retain or attract professional and senior staff that is responsible for Contract Management. The performance and non-performance of service providers, in terms of Contract Management, should be driven from the top and should be part of the directors and senior managers departmental and top layer KPI's. The results of the study analysis also indicate that the external stakeholders do not have full confidence and trust in the professionalism of officials and that the progress of projects needs to be communicated more effectively with their communities. The following are suggested areas of further research; the adoption of one single legislative framework for Contract Management to ensure compliance and that will also define accountability and roles and responsibilities.

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Appendices

A: SURVEY QUESTIONNAIRE



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STELLENBOSCH UNIVERSITY

CONSENT TO PARTICIPATE IN RESEARCH

Dear Colleagues / Professionals and Community Organizations

You are invited to take part in a study conducted by **Dalleel Jacobs**, from the SPL department at Stellenbosch University. You were approached as a possible participant because of your expertise, experience and knowledge as well as community participation within the Contract Management System at municipalities.

1. PURPOSE OF THE STUDY

The purpose of this study is to determine the effects of negative human behaviour on Contract Management in local government in the Western Cape.

Participants, please feel free to read the questions and do not hesitate to contact me directly in the event that you need clarity on the identified questions and the completion of it. The participation of the identified audience is completely voluntary, and participants were identified in terms of their expertise, experience and knowledge of the Contract Management system in municipalities.

The aim of this study is to determine the effects of negative human behaviour on the Contract Management within municipalities in the Western Cape. The interviews with the identified audiences, external stakeholders and professionals within the field of Contract Management will be treated with the highest confidentiality, and it will only be the researcher who will be in a position to collate and keep the data collected on a confidential folder. All the data that will be collected and collated will be

to the benefit of this study. Furthermore, interviews and questionnaires completed will be treated and kept confidential and will only be accessible to the researcher.

The participants can also, at any time during the completion of the questionnaires or interviews, decide not to continue if any of the questions might compromise the integrity of the participant.

Participants can also, at any stage, contact the researcher directly at Cell 060 682 0429 or at my email : Dalleelj@gmail.com or also feel free to contact my Supervisor Dr Len Mortimer at his number 082 418 8909 for any clarity, questions and further detail on the aim of the study.

The interview will be treated as confidential, and hence it is the opinion of the researcher to not foresee any risks as it is expected that the interviews and questions will be completed in a truthful and honest manner. The benefits by contributing to this study would help shape communities and improve service delivery and lead to an effective Contract Management system with effective standards and norms.

RESEARCHER' S CONTACT INFORMATION

If you have any questions or concerns about this study, please feel free to contact the researcher **Dalleel Jacobs at 0606820429** and/or the **supervisor Dr Len Mortimer at 082 418 8909**

RIGHTS OF RESEARCH PARTICIPANTS

You may withdraw your consent at any time and discontinue participation without penalty. You are not waiving any legal claims, rights or remedies because of your participation in this research study. If you have questions regarding your rights as a research participant, contact Ms Maléne Fouché [mfouche@sun.ac.za; 021 808 4622] at the Division for Research Development.

.....

DECLARATION OF CONSENT BY THE PARTICIPANT

As the participant I confirm that:

- I have read the above information, and it is written in a language that I am comfortable with.
- I have had a chance to ask questions, and all my questions have been answered.
- All issues related to privacy and the confidentiality and use of the information I provide have been explained.

- That this study is voluntary and that I am under no obligation or pressure to complete the questions, and to partake in the interviews.
- I am satisfied that all information will be treated with the highest confidentiality and will be protected.
- I can withdraw at any time and that I will not be penalised for withdrawal from participating in this study.

By signing below, I _____ agree to take part in this research study as conducted by Dalleel Jacobs in determining the effects that negative human behaviour have on Contract Management in municipalities within the western Cape .

Signature of Participant

Date

DECLARATION BY THE PRINCIPAL INVESTIGATOR
--

As the **principal investigator**, I hereby declare that the information contained in this document has been thoroughly explained to the participant. I also declare that the participant has been encouraged (and has been given ample time) to ask any questions. In addition, I would like to select the following option:

	The conversation with the participant was conducted in a language in which the participant is fluent.
--	---

Signature of Principal Investigator

Date

B: INTERVIEW QUESTIONS



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INTERVIEW QUESTIONNAIRE

SECTION A

This interview will be with SCM Managers, Head Engineers, Contract Managers and CFOs

SECTION A

PRELIMINARY CRITERIA

For completion by internal stakeholders relevant within the Contract Management system of the Municipality. Please answer the following questions as truthfully as possible regarding the functioning of an effective Contract Management system within your Municipality. All officials that will be targeted are in senior positions. The rationale for having interviews with this specific audience would be to gather first-hand experiences, challenges and to ascertain whether any lack of skills, expertise and knowledge might be prevalent. The researcher will conduct an interview with the identified stakeholders.

Your responses will remain strictly confidential.

SECTION A

OBJECTIVES OF THIS THESIS

- (a) To understand the constitutional and legislative framework for Contract Management and how this should impact human behaviour (i.e. SCM norms and standards).
- (b) To describe how human behaviour influences the stages of Contract Management and Contract Management outcomes. (Compliance, legislation, lack of accountability, consequence management, corruption, etc.)
- (c) Analyse how negative human behaviour affects each of the stages of Contract Management. (Empirical)
- (d) Make recommendations on how to minimise negative human behaviour and encourage ethical human behaviour.

- a) **To understand the constitutional and legislative framework for Contract Management and how this could impact human behaviour (i.e. SCM norms and standards).**

1. **Do municipal officials involved in the implementation of Contract Management understand the legislative and constitutional framework that governs good and effective Contract Management? What is your opinion?**

2. **What would you suggest are the challenges for municipal officials in adhering to the legislative prescripts that govern Contract Management?**

3. **Do you think that the municipality implements corrective measures effectively when areas of non-compliance have been identified by the Auditor-General?**
4. **Do you think budget holders possess the required qualifications, expertise and professional ethos to manage contracts efficiently and effectively?**
5. **Do you think that the over-regulation of the SCM environment contributes to service providers and officials taking shortcuts to deliver a service on time? Do you think your SCM unit is fully capacitated and resourced to manage the Contract Management system effectively?**
6. **Do you think that officials in municipalities understand what the roles and responsibilities are of all officials involved in the Contract Management stages?**

- b) To describe how human behaviour influences the stages of Contract Management and Contract Management outcomes. (compliance, legislation, lack of accountability, consequence management, corruption, etc.)
1. What is your opinion in terms of the following statement? Municipal officials do not have the required skills, competence and professional ethos during the Contract Management stages. Do you agree with the above statement?
 2. How does the municipality deal with non- and poor-performing vendors during the Contract Management stages and, in particular, with penalties for non-performance?
 3. Are specifications drafted in an unbiased manner to allow for an open competitive bidding process that is compliant with the legislative framework?

4. Are officials held accountable for any non-compliance pertaining to the acceptance and signing off on invoices for progress payments that do not adhere to the project scope?

5. Do you think that a lack of consequence management is evident in municipalities in terms of non-compliance during the Contract Management stages of the contract?

- Your responses will remain strictly confidential.
- Thank you for participating in the interview!



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SECTION B INTERVIEW QUESTIONS

This section is only applicable to a semi-structured interview with identified **RESPONDENTS**.

The researcher will ask respondents the following questions during the interviews. The researcher will also consider setting up Microsoft Teams meetings should the commencement of the collection of data be approved during the Covid-19 lockdown.

1. Do you think that municipal officials entrusted with Contract Management possess the required expertise and knowledge to manage contracts effectively? Please motivate your answer.

2. Do you think the constitutional provisions of Sections 217, 152, YES NO and 195 gets compromised as a result of negative and or corrupt practices within the Contract Management domain in municipalities in the Western Cape? Please motivate your answer.

-
3. Do you think that municipalities should rather outsource large infrastructure projects to the private sector and implement stricter controls for contract monitoring and performance of vendors? Please motivate your answers.

4. Should Accounting Officers be held personally liable for non-completion, poor and or negative practices with respect to capital spend and labour relations within the Contract Management domain? What is your opinion?

5. Should municipalities adopt private sector strategies and standards towards Contract Management? What is your opinion?

-
6. Do you think municipalities lack meaningful public participation during the identification of capital projects? Please provide an explanation. YES NO

7. Do you think National Treasury should consider issuing one Contract Management framework and guidance document that must clearly spell out roles and responsibilities, Contract Management, who are accountable and for what and performance evaluation assessments during each stage of the contract? What is your opinion? YES NO

8. Do you think that a lack of consequence management, corrective and lack of punitive measures within the Contract Management environment contributes to the current state of Contract Management in municipalities? Please provide an explanation. YES NO



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SECTION C

QUESTIONNAIRE TO EXTERNAL STAKEHOLDERS

This section is only applicable for the completion of the questionnaire by a selected target group. The completion of this questionnaire will be treated as confidential, and participant's anonymity will be protected in order to obtain an honest opinion from the participants.

Please answer the following questions by means of a cross (X) in the appropriate blocks.

Research Objectives

- a. To understand the constitutional and legislative framework for Contract Management and how this should impact human behaviour (i.e. SCM norms and standards).

1. <u>Are you aware of any instances where municipal officials were</u> <u>guilty of negative behaviour but were not disciplined or held</u> <u>accountable? Any comments?</u>	<u>NO</u> <u>YES</u>
---	------------------------------------

2. Are you aware of any project where inferior materials were utilised but the service provider was paid by the municipality? **NO** **YES**
Any comments?

3. Should the municipality refer cases of corruption and malpractices to an external independent investigator to prepare cases for the courts directly? **NO** **YES**
Any comments?

4. Does the over-regulation of the Municipal environment impact directly on the achievement and enhancement of service delivery in communities? **NO** **YES**
Any comments?

- b. To describe how human behaviour influences the stages of Contract Management and Contract Management outcomes. (compliance, legislation, lack of accountability, consequence management, corruption, etc.)

1. Do you think that the municipality has an open and fair procurement system? Any comments? **NO** **YES**

2. Are you aware of any service providers that were appointed in an unethical manner but were never prosecuted? Any comments? **NO** **YES**

3. Do you think that the community should be involved during the Contract Management stages of the project in terms of monitoring the deliverables and outputs of the contract? Any comments? **NO** **YES**

4. Is the municipality performing its functions in a professional manner at all times? Any comments? **NO** **YES**

5. Do you think the municipality maintains a high level of ethics**NO** **YES**
within the Contract Management field? Any comments?

6. Do you think that Accounting Officers must be held personally**NO** **YES**
liable for all non-performance of vendors if no consequence
management was implemented? Any comments?

C: RESEARCH PERMISSION



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12 February 2019

Dear Dalleel Jacobs

**SCHOOL OF PUBLIC LEADERSHIP
MASTERS IN PUBLIC ADMINISTRATION**

I am pleased to advise you that **Dr Len Mortimer** has been appointed as your study leader and supervisor for your thesis.

It is important that you make contact with your supervisor as soon as possible to ensure timeous completion of your thesis.

Office: Van der Horst Building, Bellville Park Campus

Telephone: (021) 918 - 4122

E-mail: len@sun.ac.za

I would like to remind you that students at the University are only allowed a maximum of two years from date of first registration to complete their degree. We look forward to working closely with you to ensure your academic success in the coming year.

I would like to wish you every success in your endeavours.

Yours sincerely,

N Kernelle

Teaching & Learning Coordination and Research Support

D: PERMISSION LETTER: MUNICIPAL MANAGER

Mr Dalleel Jacobs
10 Bordaekustreet
Paarl
7646

The Municipal Manager
Stellenbosch Municipality
Plein Street
Stellenbosch

REQUEST FOR PERMISSION TO CONDUCT RESEARCH ON MY TOPIC:

THE EFFECTS OF NEGATIVE HUMAN BEHAVIOUR ON CONTRACT MANAGEMENT IN MUNICIPALITIES WITHIN THE WESTERN CAPE.

I am a post graduate student currently enrolling for my MASTERS in PUBLIC ADMINISTRATION at the University of Stellenbosch, School for Public Leadership. Part of my study will be to conduct interviews with municipal officials in particular the Chief Engineer, Chief Financial Officer, Technical staff operating in the Contract Management field as well as Supply Chain Management officials.

The integrity of the institution will not be harmed in any way and all information gathered will be for the benefit of this study.

I do not foresee any implications on the Municipality should I participate in this research study and hoping on your approval and consent.

Yours in Good Public Administration.



Dalleel Jacobs

Approval Granted



Municipal Manager
Stellenbosch Municipality